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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 CLEANAIRNOW, et al.,

21 Plaintiffs,

22 v.

23 LOUIS DEJOY, et al.,

24 Defendants,

25 OSHKOSH DEFENSE, LLC,

26 Intervenor-Defendant.

27 STATE OF CALIFORNIA, et al.,

28 Plaintiffs,

v.

UNITED STATES POSTAL SERVICE, et al.,

Defendants,

OSHKOSH DEFENSE, LLC,

Intervenor-Defendant.

Case Nos. 3:22-cv-2576-RFL  
3:22-cv-2583-RFL

**DEFENDANTS' FINAL OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

Date: December 17, 2024  
Time: 10:00 a.m.  
Judge: Hon. Rita F. Lin  
Location: Courtroom 15, 18th Floor

**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 17, 2024 at 10:00 a.m., or as soon thereafter as the Court's calendar permits, before the Honorable Rita F. Lin, Defendants the United States Postal Service and Louis DeJoy will and do move for summary judgment on all of plaintiffs' claims. This motion is based on this Notice, the Memorandum of Points and Authorities below, all materials in the record, any oral argument, and any other information on which the Court may properly rely.

Defendants seek an order denying plaintiffs' motion for summary judgment and granting defendants' motion for summary judgment on all claims.

**STATEMENT OF THE ISSUES**

1. Whether plaintiffs have demonstrated a concrete and imminent injury-in-fact from vehicle emissions sufficient for Article III standing to challenge a federal program that will immediately reduce their harm from such emissions.

2. Whether government plaintiffs have demonstrated that their alleged climate-change-based economic and proprietary harms are fairly traceable to emissions from 40,250 U.S. Postal Service vehicles sufficient for Article III standing.

3. Whether plaintiffs may challenge the U.S. Postal Service's discretionary operational and business decisions regarding the composition of the national mail-delivery fleet under the Administrative Procedure Act, 5 U.S.C. § 702, despite the Postal Reorganization Act, 39 U.S.C. § 410(a), exempting those decisions from judicial review.

4. Whether the U.S. Postal Service's environmental review of its Next Generation Delivery Vehicle Acquisitions program complied with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

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## INTRODUCTION

The U.S. Postal Service is undertaking a multi-billion-dollar program to replace half its delivery fleet—106,480 increasingly unreliable vehicles from the 1980s and early 1990s that require constant upkeep. Those vehicles are expensive to maintain and lack basic safety features like airbags, anti-lock brakes, back-up cameras, and seatbelt reminders. They also lack modern operational features that are necessary for the Postal Service to promptly and reliably deliver mail to 165 million addresses six days a week, as mandated by statute. And the old vehicles emit far more pollution than new gas vehicles.

The Postal Service is committed to electrifying its fleet. Accordingly, its vehicle-replacement program mostly consists of 66,230 electric vehicles and charging stations. But given the increasingly urgent need for new vehicles, the Postal Service is purchasing some gas vehicles, which are more widely available and have lower upfront costs than electric vehicles. The program received a Presidential Federal Sustainability Award<sup>1</sup> and the top White House environmental official lauded the Postal Service for “leading by example by building the world’s largest electric delivery vehicle fleet and delivering on President Biden’s Investing in America agenda.”<sup>2</sup>

Plaintiffs seek an extraordinary vacatur of the program and a nationwide injunction of the parts that they do not like. That would prevent the Postal Service from continuing to replace old vehicles and deploying the new electric and gas vehicles it has already received. Plaintiffs do not carry their heavy burden of showing they are entitled to such relief. To begin with, plaintiffs lack standing because they have not established any injury-in-fact. Their alleged injuries relate to emissions from new gas vehicles. But most of the new vehicles will be electric, and the new gas vehicles pollute *far less* than the old vehicles they are replacing on a one-for-one basis. Plaintiffs also do not show any imminent risk of injury, or any meaningful contribution to emissions, from new vehicles.

Further, Plaintiffs’ arguments are meritless. The Postal Service is statutorily required to prioritize cost, consistency, and efficiency when purchasing vehicles. To facilitate those goals, Congress insulated Postal Service procurement decisions from judicial review. Plaintiffs cannot

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<sup>1</sup> Office of Fed. Chief Sustainability Officer, Council on Env’t Quality, *Presidential Federal Sustainability Awards*, <https://perma.cc/9ALH-6JRT>.

<sup>2</sup> U.S. Postal Serv., *U.S. Postal Service Unveils First Postal Electric Vehicle Charging Stations and Electric Delivery Vehicles* (Jan. 22, 2024), <https://perma.cc/2GJP-K5NJ>.

1 bring Administrative Procedure Act (APA) claims alleging that the Postal Service's vehicle pur-  
2 chasing decision, selected vehicle mix, and related cost analysis were arbitrary and capricious.  
3 Those arguments—which are unrelated to the process requirements in the National Environmental  
4 Policy Act (NEPA)—are not justiciable. Besides, the Postal Service's choices regarding the  
5 makeup of its fleet were reasonably based on its national operating needs.

6 Plaintiffs further allege that the Postal Service violated NEPA, which obligates agencies to  
7 assess the environmental impacts of their actions. Those claims are also meritless. The Postal Ser-  
8 vice conducted two extensive rounds of environmental review. Its vehicle supplier contracts did  
9 not predetermine the outcome of that analysis. The Postal Service entered into contracts to secure  
10 supplier commitments but those contracts were expressly contingent on independent NEPA review.  
11 That is standard agency practice for complex programs that require years to develop. Plaintiffs seize  
12 on the contracts' payment guarantees for work performed. But that did not predetermine the out-  
13 come—the Postal Service always had the option to change course and it completed the NEPA re-  
14 view before receiving any vehicles. The Postal Service also evaluated a reasonable range of seven  
15 alternatives, including several all-electric alternatives. Plaintiffs wanted the Postal Service to ana-  
16 lyze their preferred percentages of electric vehicles. But NEPA does not require agencies to evalu-  
17 ate every conceivable alternative and the Postal Service fully considered the environmental impacts  
18 of electric and gas vehicles. Plaintiffs' preferences are not actionable under NEPA.

19 Even if the Court were to hold that the Postal Service violated NEPA process requirements,  
20 it still should reject plaintiffs' sweeping request for vacatur and a nationwide injunction. Injunctions  
21 are typically unwarranted in NEPA cases, where the ultimate legal claim is that the agency must  
22 conduct more environmental review, not that it must cease the underlying action. Further, courts  
23 must seriously weigh the disruptive consequences of vacatur or an injunction. Here, the conse-  
24 quences would be catastrophic for the Postal Service and the public. The Postal Service would be  
25 forced to continue using increasingly unreliable decades-old vehicles, preventing it from undertak-  
26 ing urgently needed modernization. That would needlessly create safety risks for mail carriers and  
27 the public and prolong their exposure to exhaust from higher-polluting vehicles. The Postal Service  
28 also would have to immediately stop deploying new vehicles it has already received. These

1 disruptions would have extraordinary health, economic, and electoral consequences by slowing the  
 2 delivery of time-sensitive mail on which the public (and plaintiffs) depend. A remedy with such  
 3 harmful nationwide effects is unwarranted.

#### 4 STATEMENT OF THE CASE

##### 5 A. Factual Background

##### 6 1. The Postal Service Operates Like A Business To Promptly And Efficiently Deliver The Mail Six Days A Week To 165 Million Addresses

7 The Postal Service is “the nation’s oldest and largest public business” (*USPS v. Flamingo*  
 8 *Indus. (USA) Ltd.*, 540 U.S. 736, 739 (2004)) and its “largest nonmilitary purchaser of transport.”  
 9 *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 122 (1981); JA35. It has a 640,000-  
 10 person workforce that processes billions of letters and packages annually. JA970. That includes  
 11 248,000 carriers who operate a fleet of more than 210,000 vehicles, driving millions of miles daily  
 12 to service 165 million addresses. JA950, JA968; *see Council of Greenburgh*, 453 U.S. at 122.

13 In 1970, Congress enacted the Postal Reorganization Act (PRA), 39 U.S.C. § 101 *et seq.*,  
 14 converting the Postal Service into an independent agency to “increase . . . efficiency . . . and reduce  
 15 political influences on its operations.” *Flamingo Indus.*, 540 U.S. at 740. The PRA requires the  
 16 Postal Service to deliver the mail at least six days a week in a “prompt, reliable, and efficient”  
 17 manner. 39 U.S.C. §§ 101(a)-(b), 201, 403. In carrying out that mission, the Postal Service must  
 18 run “like a business.” *Franchise Tax Bd. of Cal. v. USPS*, 467 U.S. 512, 520 (1984). To that end,  
 19 the Postal Service is led by a Board of Governors “with functions similar to a board of directors.”  
 20 *Mail Ord. Ass’n of Am. v. USPS*, 986 F.2d 509, 519 (D.C. Cir. 1993); *see* 39 U.S.C. § 202. The  
 21 Board “direct[s]” the Postal Service, including in entering into contracts, making expenditures, and  
 22 acquiring property “necessary or convenient in the transaction of its business.” 39 U.S.C. §§ 202(a),  
 23 401(3), (5). Crucially, the PRA mandates that the Postal Service, in selecting delivery vehicles,  
 24 “give highest consideration” to “the prompt, economical, consistent, and reliable delivery of all  
 25 mail in a manner that increases operational efficiency and reduces complexity.” *Id.* § 101(f).

26 To enable the Postal Service to effectively execute those responsibilities, the PRA contains  
 27 an “express removal of [APA] review of the Service’s actions.” *Currier v. Potter*, 379 F.3d 716,  
 28 725 (9th Cir. 2004) (discussing 39 U.S.C. § 410(a)); *see Mittleman v. PRC*, 757 F.3d 300, 304-05



(D.C. Cir. 2014). There is a narrow exception for “laws [that] remain in force as rules or regulations of the Postal Service.” 39 U.S.C. § 410(a). The Ninth Circuit has held that the exception encompasses NEPA. *See Akiak Native Cmty. v. USPS*, 213 F.3d 1140, 1144 (9th Cir. 2000).

## 2. There Is An Urgent Need To Update The Aging Postal Delivery Fleet

Due to constrained finances, the Postal Service’s 210,000-vehicle fleet mostly consists of purpose-built vehicles that are, on average, *32 years old*. JA941, JA950, JA966-67. Those vehicles are “near or at the end of their useful li[ves].” JA941. Their main powertrain components have been replaced multiple times and are currently available only through aftermarket suppliers. JA967. And the only way to repair their chassis is by contracting with suppliers to “reverse engineer” the original parts. *Id.* Annual maintenance costs exceed \$4,500 per vehicle and are increasing. JA960-61, JA967. In addition, the old vehicles are “energy-intensive [and] high-polluting” compared to modern gas vehicles. *Id.*; *see* JA998.

These old vehicles lack “modern safety . . . features needed for mail carriers,” and to protect other road users, including airbags, anti-lock brakes, air conditioning, back-up cameras and alarms, intermittent windshield wipers, blind-spot warning systems, daytime running lights, and seatbelt reminders. JA941, JA967. They also lack operational features, such as internal access to cargo areas, window openings for carrier mobility, and sufficient mail trays in the cabins. *Id.*

The vehicles’ 1980s design made sense when letters were a larger percentage of overall mail. *See* JA968. But today, the Postal Service delivers more packages and services far more delivery points, and those trends are expected to continue. *Id.* For these reasons, the Postal Service concluded that the old vehicles are “no longer effective in enabling” it to fulfill the “Congressional mandate to maintain efficient nationwide delivery of the mail.” JA941.

## 3. The Postal Service Is Replacing Half Its Delivery Fleet And Most Of The New Vehicles Will Be Electric

In December 2023, the Postal Service issued a Revised Record of Decision (ROD) to purchase and deploy 106,480 new vehicles to replace 1980s and early 1990s delivery vehicles. The new vehicles include purpose-built Next Generation Delivery Vehicles (NGDVs) and commercial-off-the-shelf (COTS) vehicles. JA930. Sixty-two percent of the new vehicles will be electric. *Id.* The Biden Administration heralded the Postal Service’s “historic . . . investment” in electric



1 vehicles.<sup>3</sup> The Revised ROD was the culmination of more than seven years of agency planning and  
 2 operational, engineering, and scientific analysis, including two robust NEPA reviews.

3 **i. The Postal Service evaluated dozens of prototypes and selected**  
 4 **an NGDV supplier**

5 The vehicle-modernization process began in 2015 when the Postal Service posted a public  
 6 notice seeking information from manufacturers on developing NGDV prototypes according to op-  
 7 erational specifications. JA30. Fifteen manufacturers responded and the Postal Service invited them  
 8 to submit proposals. *Id.* Based on the submissions, the Postal Service awarded contracts to six sup-  
 9 pliers that developed 44 gas, hybrid, and electric prototypes. *Id.* The prototype contracts did not  
 10 “beg[i]n the [vehicle acquisition] Program.” Pls.’ Br. 21 (hereinafter “Br.”). They were discrete  
 11 actions separate from the challenged decision to “purchase and deploy[]” 106,480 vehicles. JA930.

12 The Postal Service conducted 450,000 hours of prototype testing, and evaluated total cost  
 13 of ownership, vehicle design, and supplier manufacturing capabilities. JA30-31, JA246, JA309-12.  
 14 During that process, the Postal Service consulted with mail carriers and other federal stakeholders,  
 15 the automotive industry, and postal unions. JA31. Based on that analysis, the Postal Service, in  
 16 2019, sought proposals to manufacture an NGDV with operational features including a walk-in  
 17 cargo area with sufficient package space, right-hand-drive configuration for curbside delivery, and  
 18 an ergonomic design, along with modern features for driver safety and comfort. *Id.*

19 In February 2021, the Postal Service entered into a contract with Oshkosh Defense LLC  
 20 (Oshkosh) to deliver 50,000-165,000 NGDVs. JA866. Like many contracts for major agency pro-  
 21 grams, the NGDV contract was “expressly contingent upon the satisfactory completion of the  
 22 NEPA . . . process.” *Id.* A “special provision” provided that the Postal Service was “required to  
 23 comply with” NEPA; that it “anticipate[d] preparing . . . detailed” analysis of “the environmental  
 24 impacts of” the program “as well as reasonable alternatives”; and that it could not “guaranty either  
 25 the outcome or duration of the NEPA . . . process,” which could “require[]” changing “the quantity  
 26 [or] type” of “NGDVs purchased.” JA873. The contract stated that the Postal Service would com-  
 27 pensate Oshkosh for work performed. JA900.

28 <sup>3</sup> *Biden-Harris Administration Announces Historic Investment to Electrify U.S. Postal Service Fleet*  
 (Dec. 20, 2022), <https://perma.cc/7NKR-XFL7>.

1 The Postal Service recognized that NGDV production would take significant time and “pru-  
 2 dent planning.” JA11-12. The Postal Service allocated up to \$482 million for Oshkosh to complete  
 3 pre-production engineering and tooling necessary to make both gas and electric NGDVs. JA11-12.  
 4 The allocation did not fund “the purchase of any vehicles.” JA12. The Postal Service paid only a  
 5 “small fraction” of the allocation prior to completing its NEPA review. JA11.

6 **ii. The Postal Service prepared an EIS to analyze potential environ-**  
 7 **mental impacts and alternatives**

8 Pursuant to NEPA, the Postal Service analyzed potential environmental effects of the pro-  
 9 gram. NEPA is an “essentially procedural” statute. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435  
 10 U.S. 519, 558 (1978). It requires an agency proposing a “major Federal action[] significantly af-  
 11 fecting the quality of the human environment” to prepare an environmental impact statement (EIS).  
 12 42 U.S.C. § 4332(2)(C). NEPA does not “mandat[e] . . . particular substantive environmental re-  
 13 sults” (*Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)) but rather ensures that agen-  
 14 cies take a “hard look” at the potential environmental effects of their actions. *Robertson v. Methow*  
 15 *Valley Citizens Council*, 490 U.S. 332, 350 (1989). Importantly, agencies may take “action in fur-  
 16 therance of [a] proposal while the EIS is being prepared” (*Monsanto Co. v. Geertson Seed Farms*,  
 17 561 U.S. 139, 145 (2010)) if the action does not have “adverse environmental impact[s]” or “[l]imit  
 the choice of reasonable alternatives.” 40 C.F.R. § 1506.1(a) (2023).

18 In March 2021, the Postal Service announced that it would prepare an EIS for the program  
 19 and solicited public comments on its scope. JA33. The Postal Service incorporated the 1,750 com-  
 20 ments it received into a draft EIS that analyzed potential impacts of the program. JA2274-441. The  
 21 Postal Service solicited a second round of feedback on the draft EIS and received 37,500 comments,  
 22 the vast majority of which were form letters from advocacy-group members. JA118. The Postal  
 23 Service incorporated those comments into the final EIS, which it published in December 2021.  
 24 JA17-383. The final EIS contained responses to comments (JA263-304) including a detailed re-  
 25 sponse to comments from the Environmental Protection Agency (EPA). JA263-91; *see* JA120-32.  
 26 That response provided additional information on the Postal Service’s emissions analysis (JA264);  
 27 explained why EPA’s preferred electric-vehicle suppliers did not meet Postal Service standards  
 28 (JA274-75); identified sources of price data for fuel and electricity (JA269-71); answered cost

1 questions (JA272-73); and addressed environmental-justice questions (JA289-90).

2 The EIS analyzed in detail the impacts of five—not four (*cf.* Br. 9)—alternatives: purchas-  
3 ing (1) 50,000-165,000 NGDVs, at least 10% of which would be electric; (2) 50,000-165,000 elec-  
4 tric NGDVs; (3) up to 165,000 gas COTS vehicles; (4) up to 165,000 electric COTS vehicles; and  
5 (5) implementing a “no-action alternative” to “maintain[] . . . the status quo.” JA38-45; JA19. For  
6 each alternative, the Postal Service evaluated potential impacts on transportation, traffic, noise,  
7 hazardous waste, and air quality, including impacts of greenhouse gas emissions. JA46-48, JA314-  
8 55. Where applicable, the Postal Service relied on EPA-endorsed modeling, including the Motor  
9 Vehicle Emission Simulator (MOVES) model for measuring direct vehicle emissions and the  
10 Greenhouse Gases, Emissions, and Energy use in Technologies (GREET) model for measuring  
11 lifecycle greenhouse gas emissions. JA59-77, JA322-44.

12 The Postal Service went beyond the requirements of NEPA to provide the public with ad-  
13 ditional insight into its decision-making. The EIS included data on the “wide range of cost factors”  
14 that the Postal Service used to compare the total cost of owning and operating the potential suppli-  
15 ers’ prototypes. JA7, *see* JA40, JA269-72, JA309-12. The Postal Service used that data to “deter-  
16 mine ‘best value’” when comparing prototypes. JA7. Likewise, even though executive orders on  
17 environmental justice “do not apply to the Postal Service,” it “fulfill[ed] the spirit” of those orders  
18 by considering impacts on environmental-justice “communities of concern.” JA50.

19 Based on the EIS, the Postal Service, in February 2022, issued a ROD that selected its pre-  
20 ferred alternative to purchase and deploy 50,000-165,000 NGDVs, at least 10% of which would be  
21 electric. JA2-15. That alternative gave the Postal Service the “flexibility to acquire significantly  
22 more [electric] NGDV[s] should funding become available.” JA5. After issuing the ROD, the Postal  
23 Service ordered 50,000 NGDVs from Oshkosh. JA2966-68. Although the order provided that 20%  
24 of those vehicles would be electric (JA3048), the NGDV contract expressly empowered the Postal  
25 Service to modify the vehicle mix. JA897-98. The Postal Service later “changed the model mix”  
26 for that order to 70% electric vehicles. JA2162.

27 In response to a congressional request, the Postal Service’s Office of Inspector General  
28 (OIG) audited the EIS. Ex. C, Pls.’ Req. for Judicial Notice. OIG concluded that the EIS “followed

1 NEPA’s procedural requirements.” *Id.* at 1. OIG also suggested that, if the Postal Service were to  
 2 modify the program and conduct further NEPA review, it should consider evaluating additional  
 3 alternatives and update certain emissions estimates to “improve the reliability and reasonableness”  
 4 of its analysis “for decision makers and stakeholders.” *Id.* The Postal Service incorporated many of  
 5 OIG’s suggestions into the supplemental NEPA review described below. JA1348.

6 **iii. Changing operational needs and increased funding led the Postal Service to modify the program**

7 In July 2022, the Postal Service announced that it was considering modifying the program  
 8 due to, among other factors, the increasingly “critical need” to quickly replace old vehicles.  
 9 JA1041-42; *see* JA1036. Since Oshkosh would take several years to ramp up NGDV production,  
 10 the Postal Service considered “expand[ing] the scope of vehicle types being considered” to provide  
 11 “greater flexibility” to deploy new vehicles. JA951. Such purchasing flexibility would also make  
 12 the program “more responsive” to “evolving operational strategy, technology improvements, and  
 13 changing market conditions,” and would “accelerate fleet electrification.” JA951.

14 Soon thereafter, Congress allocated \$3 billion for the Postal Service to purchase zero-emis-  
 15 sion delivery vehicles and charging infrastructure. Inflation Reduction Act of 2022 (IRA), Pub. L.  
 16 No. 117-169, § 70002, 136 Stat. 1818, 2086-87. The additional funding enabled the Postal Service  
 17 “to consider increasing and accelerating” electric vehicle purchases. JA951.

18 In December 2022, the Postal Service issued a press release on its vehicle-electrification  
 19 efforts. Ex. D, Pls.’ Req. for Judicial Notice (*EV Press Release*). Consistent with its earlier com-  
 20 mitment to acquire more electric vehicles “should additional funding become available” (JA4-5),  
 21 the Postal Service announced an “anticipated plan” to acquire, by 2028, 60,000 NGDVs, at least  
 22 75% of which would be electric. *EV Press Release*. The Postal Service further announced that it  
 23 “expected” to supplement the NGDVs with COTS vehicles, a significant portion of which would  
 24 be electric. *Id.* The press release did not commit the Postal Service to a particular course of action.  
 25 It expressly acknowledged that the Postal Service would need to develop a “Supplemental Envi-  
 26 ronmental Impact Statement” to “assess the potential environmental impacts of vehicle purchase  
 27 alternatives, likely including those” in the press release. *Id.*

28 Based on those developments, the Postal Service, in February 2023, entered into supplier

1 contracts to purchase 9,250 electric and 9,250 gas COTS vehicles. JA2167-214, JA2226-72. Like  
 2 the NGDV contract, the COTS contracts were “contingent upon the satisfactory completion of the  
 3 NEPA . . . process,” which could “require[]” the Postal Service to “modify the quantity, type, or  
 4 delivery timeline for vehicles purchased.” JA2175, JA2235; *see* JA2255-56, JA2195-96 (authoriz-  
 5 ing the Postal Service to “terminate” the contracts “for its sole convenience”). A standard provision  
 6 required payment for work performed. JA2255-56, JA2195-96.

7 **iv. The Postal Service prepared an SEIS to analyze the environmen-**  
 8 **tal impacts of program modifications**

9 The Postal Service developed a supplemental environmental impact statement (SEIS) to  
 10 analyze the environmental impacts of potential changes to the program in accordance with its, and  
 11 the Council on Environmental Quality’s (CEQ), NEPA regulations. *See* 39 C.F.R. § 775.11(f)(1)(i);  
 12 40 C.F.R. § 1502.9(d) (2023).<sup>4</sup> The Postal Service solicited two rounds of comments on the SEIS.  
 13 JA1036. The first round concerned the scope of the environmental review for the potential program  
 14 changes (JA1041, JA1049); the second round sought feedback on the draft SEIS (JA1369). The  
 15 Postal Service incorporated comments it received into the SEIS. JA953.

16 The SEIS evaluated the environmental impacts of three alternatives to replace 106,480 old  
 17 vehicles: (1) the Postal Service’s preferred alternative to, over six years, deploy 60,000 NGDVs  
 18 and 46,480 COTS vehicles, 62% of which will be electric; (2) an alternative to, over eight years,  
 19 deploy 106,480 NGDVs, 62% of which will be electric; and (3) a no-action alternative to proceed  
 20 under the original ROD. JA958-64, JA966-1011. The Postal Service considered “multiple mission-  
 21 critical factors” to determine which additional alternatives to analyze, including the “urgent need  
 22 to replace . . . aging vehicles,” “route suitability” for electric vehicles, “upfront acquisition costs,”  
 23 and the agency’s “evolving vehicle procurement strategy.” JA956. The preferred alternative met  
 24 “performance, safety and ergonomic requirements,” leveraged all of the IRA funding, and “accel-  
 25 erate[d]” operational and safety goals. JA940.

26 In analyzing impacts from vehicle emissions, the SEIS used an updated version of EPA’s

27 <sup>4</sup> CEQ recently revised its NEPA regulations. 89 Fed. Reg. 35442 (May 1, 2024). Those revisions  
 28 took effect July 1, 2024. Unless otherwise noted, citations are to the CEQ regulations in effect when  
 the Postal Service issued the Revised ROD. Plaintiffs rely on new language not contained in the  
 operative CEQ regulations. *See* Br. 3 (quoting 40 C.F.R. § 1500.1(a) (2024)).

1 MOVES model and again used the GREET model. JA981-94, JA1719-31. The SEIS included up-  
 2 dated analysis on the social cost of greenhouse gas emissions based on recent CEQ modeling.  
 3 JA984-85, JA989, JA992, JA995. The Biden Administration commended the Postal Service for  
 4 conducting this analysis.<sup>5</sup> The Postal Service concluded that its preferred alternative was not incon-  
 5 sistent with any state or local laws. JA1359; *see* JA1336, JA1640-41.

6 Like the EIS, the SEIS included information beyond that required by NEPA to provide in-  
 7 sight into the decision-making process. The SEIS explained that due to the growing need to replace  
 8 unreliable vehicles, the program will include some gas vehicles. Compared to electric vehicles, gas  
 9 vehicles that meet postal operational needs are more widely available, “significant[ly]” cheaper,  
 10 and can be deployed right away without installing charging stations, which is a lengthy undertaking.  
 11 JA956-58. Due to the immediately available IRA funding and improved finances, the Postal Service  
 12 evaluated upfront cost, rather than total cost of ownership, to determine the electric-gas vehicle  
 13 mix. JA958. The Postal Service is using IRA funds to “accelerate” charging-station installation in  
 14 order to deploy electric vehicles sooner and to “mitigate . . . pricing risk” in order to “stabilize”  
 15 vehicle acquisitions. *Id.* The SEIS also contained detailed environmental-justice analysis. JA1002-  
 16 09, JA1671-92. The Postal Service “anticipates deploying a large portion” of the new vehicles to  
 17 414 “[c]andidate [s]ites,” 84% of which are in environmental-justice communities. JA1005. That  
 18 will “significantly reduce direct air emissions” from mail delivery in those communities. *Id.*

19 EPA submitted comments on the SEIS that primarily recommended strategies to “increase  
 20 the [program’s electric-vehicle] commitment to greater than 62 percent.” JA1790; *see* JA1789-96.  
 21 EPA did not raise concerns about the underlying environmental analysis and noted its “appre-  
 22 ciat[ion]” for the Postal Service’s environmental-justice analysis. JA1796; *see* JA931.

23 In December 2023, the Postal Service issued a Revised ROD that modified the program to  
 24 authorize the “purchase and deployment” of 106,480 NGDVs and COTS vehicles. JA930; *see*  
 25 JA928-36. Sixty-two percent of the new vehicles will be electric. *Id.* An all-gas fleet would accom-  
 26 plish program objectives, but the Postal Service “significantly increase[d]” electric vehicle pur-  
 27 chases because it is “committed to reducing . . . greenhouse gas emissions in a fiscally responsible

28 <sup>5</sup> White House, *Fact Sheet: Biden-Harris Administration Announces New Actions to Reduce Green-  
 house Gas Emissions and Combat the Climate Crisis* (Sept. 21, 2023), <https://perma.cc/AVA3-NNEM>.



1 and mission-capable manner.” JA934. The Revised ROD responded to EPA’s comments on the  
 2 electric-gas mix. It explained that, given the currently limited availability of electric vehicles that  
 3 meet postal operational needs, further increasing their percentage would slow vehicle replacement,  
 4 which would increase environmental impacts, jeopardize the Postal Service’s service mission, and  
 5 create safety risks for mail carriers and the public. JA931-32.

6 The Revised ROD is only the first stage of modernizing the postal fleet. JA932. For future  
 7 vehicle procurements, the Postal Service plans to take advantage of any “positive trends” in cost  
 8 and technological improvements to accomplish a “fiscally responsible and mission-capable roll-  
 9 out” of electric vehicles. JA941, JA1628; *see* JA958.

## 10 **B. Procedural History**

11 Three sets of plaintiffs challenged the original ROD: the governments and organizations in  
 12 these consolidated cases, and the Natural Resources Defense Council and United Auto Workers in  
 13 a New York case, NRDC v. DeJoy, No. 22-cv-3442 (S.D.N.Y.). These consolidated cases were  
 14 originally assigned to Judge James Donato, who granted Oshkosh’s motion to intervene.

15 Over plaintiffs’ oppositions, both courts stayed the lawsuits when the Postal Service began  
 16 preparing the SEIS to modify the program. California Dkt. 121; NRDC Dkt. 67. After the Postal  
 17 Service issued the Revised ROD to replace half its fleet with mostly electric vehicles, the New  
 18 York plaintiffs voluntarily dismissed their action. NRDC Dkt. 84. In these cases, the Court lifted  
 19 the stays and the plaintiffs filed “supplemental” complaints, California Dkt. 149.

## 20 **ARGUMENT**

### 21 **I. PLAINTIFFS LACK STANDING TO BRING THEIR CLAIMS**

22 Article III empowers the federal courts to decide only “Cases” and “Controversies.” U.S.  
 23 Const. art. III, § 2, cl. 1. A case or controversy exists only if the plaintiff has standing, a requirement  
 24 that “ensures that [the] federal courts decide only ‘the rights of individuals,’” rather than “exercise  
 25 general legal oversight of the Legislative and Executive Branches.” *TransUnion LLC v. Ramirez*,  
 26 594 U.S. 413, 423-24 (2021). Standing prevents federal courts from operating as “open forum[s] . . .  
 27 to press general complaints about the way in which government goes about its business.” *FDA v.*  
 28 *All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (*AHM*).

The “irreducible constitutional minimum of standing” has “three elements.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Id.* Second, the injury must be “fairly . . . trace[able] to the challenged action of the defendant.” *Id.* at 560-61. “Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.* at 561. The plaintiff “bears the burden of establishing these elements” (*id.*) and must do so on summary judgment with “specific facts” as opposed to “mere allegations.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 412 (2013). Where a plaintiff “is not himself the object of the government action . . . he challenges,” standing “is ordinarily ‘substantially more difficult’ to establish.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Plaintiffs have not established standing here.

#### **A. Plaintiffs Have Not Established A Cognizable Injury-In-Fact**

Plaintiffs fail to establish an injury-in-fact, which is a “hard floor of Article III jurisdiction.” *Summers*, 555 U.S. at 497. They demonstrate no “concrete” injury. *Lujan*, 504 U.S. at 560-61. Further, their alleged harms are “speculative” and “hypothetical,” not imminent. *Id.*

##### **1. Plaintiffs Have Not Shown That The Program Will Harm Them**

Only a plaintiff who demonstrates that he will suffer a “distinct and palpable injury to himself” can “make out a case or controversy between himself and the defendant.” *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99-100 (1979). In other words, the injury “must actually exist.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). None of plaintiffs’ alleged harms qualifies.

Plaintiffs contend that they were injured by “procedural violations” of NEPA, specifically the failure to “consider all reasonable alternatives.” Br. 18. That argument contravenes the basic tenet of standing that a plaintiff asserting a procedural violation must show that “the procedures in question are designed to protect some threatened concrete interest that is the ultimate basis of his standing.” *Lujan*, 504 U.S. at 573 n.8; *see id.* at 573-74. The Ninth Circuit has repeatedly applied that teaching in NEPA cases to hold that a “free-floating assertion of a procedural violation . . . does not constitute an injury in fact.” *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 938 (9th Cir. 2005); *see, e.g., W. Watersheds Project v. Grimm*, 921 F.3d 1141, 1146 (9th Cir. 2019)



(collecting decisions). Plaintiffs also assert a “procedural right” to comment during the NEPA process. Br. 18-19. But they do not argue that the Postal Service deprived them of that right. Indeed, plaintiffs submitted multiple rounds of comments on the EIS and SEIS. JA133-35, JA158-205, JA221-44, JA1268-77, JA1278-80, JA1281-301, JA1540-66, JA1589-609. Regardless, the “deprivation of a procedural right” cannot “create Article III standing” “without some concrete interest that is affected by the deprivation.” *Summers*, 555 U.S. at 496. Plaintiffs’ theories of procedural injury flout the modern understanding of the injury requirement.

Plaintiffs next argue that the program “threaten[s] to cause” harm that the government plaintiffs’ policies address. Br. 19. That too is not a concrete injury. Abstract (and, in this case, nonexistent, Part II.B.5, *infra*) friction between state and federal law is not an “actual injury.” *Sturgeon v. Masica*, 768 F.3d 1066, 1074 (9th Cir. 2014), *vacated on other grounds*, 577 U.S. 424 (2016).

Finally, Plaintiffs argue that the program will harm them and their members by “increas[ing] pollution” (Br. 20) but that is flat wrong. The program will *reduce* air pollution by replacing 106,480 32-year-old gas vehicles on a one-for-one basis with 66,230 electric vehicles and 40,250 much cleaner gas vehicles. JA956, JA1762-63, JA988-89, JA1016. The new gas vehicles emit significantly less pollution than the old vehicles: For example, during city delivery they emit 71.2% less particulate matter, 2.76% less carbon monoxide, 30% less carbon dioxide, and 73% less sulfur dioxide. *Compare* JA1704, *with* JA1708. The Biden Administration thus explained that the program will “result[] . . . in cleaner air [and] better health.” *Presidential Federal Sustainability Awards*.

Plaintiffs cannot suffer a concrete injury from a program that will substantially decrease their exposure to air pollution. As the Supreme Court recently explained, it “would be quite strange to think that a party experiences an Article III injury by . . . not being *more* affected by” agency action. *DOE v. Brown*, 600 U.S. 551, 564 (2023). Accordingly, courts have held that plaintiffs lack standing to challenge agency actions that benefit them. Consider *Nuclear Information & Resource Service v. NRC*, 457 F.3d 941 (9th Cir. 2006), where citizen groups brought NEPA claims challenging rules for transporting radioactive material, which were more stringent than previous regulations. *Id.* at 945-47. The groups alleged that transporting radioactive material would cause their members to suffer health-related harms. *Id.* at 951. But the members’ health interests were “served,

1 not harmed, by the enactment of” the new rules, which were “more protective” than the previous  
 2 regime. *Id.* at 953-54. The Ninth Circuit thus held that plaintiffs suffered no injury-in-fact. *Id.* at  
 3 952-54. It explained that a government action does not “harm a concrete interest when the action  
 4 [leads] to a result that [is] *beneficial*” to the challenger. *Id.* at 954; *see, e.g., Michigan v. EPA*, 581  
 5 F.3d 524, 529 (7th Cir. 2009) (“Michigan’s air can only benefit from” an EPA administrative rul-  
 6 ing); *Idaho Farm Bureau Fed’n v. Babbitt*, 900 F. Supp. 1349, 1363 (D. Idaho 1995) (listing mol-  
 7 lusks was “beneficial to the mollusks and their habitat, rather than harmful”). Here too, plaintiffs  
 8 suffer no harm from an agency action that resounds to their benefit.

## 9 **2. Plaintiffs Have Not Shown Any Imminent Injury**

10 Plaintiffs fail to establish an injury-in-fact for a separate, independent reason: They demon-  
 11 strate no imminent harm. The power of the federal courts is restricted to redressing “actual or im-  
 12 minent” injuries that are “not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560. A plaintiff  
 13 alleging a future harm thus must “demonstrate that the threatened injury is certainly impending.”  
 14 *Clapper*, 568 U.S. at 412. Neither set of plaintiffs satisfies that requirement.

### 15 **i. The organization plaintiffs have not identified any member who 16 faces an imminent injury**

17 No organization plaintiff argues that it will suffer “an injury in its own right.” *Students for*  
*Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). Rather,  
 18 each asserts “standing solely as the representative of its members.” *Id.* To establish representational  
 19 standing, an organization must show that “its members would otherwise have standing to sue in  
 20 their own right.” *Id.* The organization must “establish[] that at least one identified member had  
 21 suffered or would suffer harm” (*Summers*, 555 U.S. at 498) by showing a “reasonable probability  
 22 of the challenged action’s threat” to the member’s concrete interests. *Citizens for Better Forestry*  
 23 *v. USDA*, 341 F.3d 961, 972 (9th Cir. 2003).

24 No member declaration demonstrates imminent harm from new gas vehicles. Assertions  
 25 about past or current vehicle emissions from old delivery vehicles (Reinhart Decl. ¶¶ 6-8; Makarem  
 26 Decl. ¶¶ 6-9; Dykiel Decl. ¶ 6) do not show “imminent future injury” from new vehicles. *Summers*,  
 27 555 U.S. at 495; *see Lujan*, 504 U.S. at 564. Several declarants voice concerns about future impacts  
 28 to local air quality from gas vehicles (Molidor Decl. ¶ 10; Reinhart Decl. ¶ 10; Dykiel ¶ 7; Isenberg

Decl. ¶ 8) but those speculative harms are not “reasonably probable” (*Citizens for Better Forestry*, 341 F.3d at 969) let alone “certainly impending.” *Clapper*, 568 U.S. at 401-02. Most of the new vehicles will be electric; only 38% will be gas. JA956. And the Postal Service is currently replacing only half of its fleet. JA29. Each declarant thus has only a 19% chance of living on a mail route that may be serviced by a new, less-polluting gas vehicle. Indeed, several declarants acknowledge that their alleged harms will arise only “[i]f the Postal Service’s gas[] vehicles pass through [their] neighborhood[s].” Reinhart Decl. ¶ 10 (emphasis added); *see* Molidor Decl. ¶ 10.

An alleged harm that has only a 19% chance of arising is not imminent. *See, e.g., Mont. Env’t Info. Ctr. v. Stone-Manning*, 766 F.3d 1184, 1189 n.4 (9th Cir. 2014) (injury risk of 45% insufficient); *Beck v. McDonald*, 848 F.3d 262, 276 (4th Cir. 2017) (injury risk of 33% insufficient); *Sumanti v. Strange*, 2017 WL 6492679, at \*3 (W.D. Wash. Dec. 19, 2017) (injury risk of 35-40% insufficient); *see also McMorris v. Carlos Lopez & Assocs.*, 995 F.3d 295, 300 (2d Cir. 2021) (a “possible” or even “reasonabl[y] likel[y]” future injury does not confer standing). And the organizations cannot satisfy the imminence requirement by alleging “a statistical probability that some of th[eir] members” live on routes that gas vehicles will service. *Summers*, 555 U.S. at 497; *see id.* at 495. Accordingly, the organization plaintiffs do not allege an imminent injury-in-fact.

**ii. The government plaintiffs have not shown any impending harm to their proprietary interests**

The government plaintiffs likewise fail to establish an imminent injury. Parties generally cannot base standing on third-party interests (*Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004)) and states lack “standing as *parens patriae* to bring an action against the Federal Government.” *Haaland v. Brackeen*, 599 U.S. 255, 295 & n.11 (2023). Accordingly, the government plaintiffs cannot sue “on behalf of [their] citizens and residents” (LaLone Decl. ¶ 2) to protect “public health.” Br. 20; *see* LaLone Decl. ¶ 15 (seeking to “protect[] the health and safety of New York’s residents”); Johnson Decl. ¶¶ 8-9, 13, 16-17 (alleging harm to “New Yorkers’ health”).

Nor do the government plaintiffs demonstrate an imminent injury based on their proprietary interests. Plaintiffs’ vague, one-sentence argument that the program will “contribute to climate change and damage . . . parks . . . and other resources” that they own (Br. 20) is insufficient on summary judgment to establish a certainly impending injury. *See Clapper*, 568 U.S. at 402.

Further, the government standing declarations contain no specific facts establishing that any harm is imminent. Speculation about “increased costs for [New York] City” from asthma-related hospital visits (Johnson Decl. ¶ 11) does not show such costs are “certainly impending” (*Clapper*, 568 U.S. at 412)—especially when the Postal Service has yet to determine where it will deploy gas vehicles. The same is true of vague statements that “[s]ignificant expansions of fleets of gas-powered . . . vehicles” will “increase[] . . . climate change impacts to the [California] Park System” (Chamberlin Decl. ¶ 15) and properties owned by New York. LaLone Decl. ¶¶ 39, 42, 48-49. The Postal Service is shrinking—not “significant[ly] expan[ding]”—its gas-powered fleet by replacing more than 66,000 gas vehicles on a one-for-one basis with electric vehicles, and the new gas vehicles have lower emissions too. Plaintiffs also cite (Br. 19-20) *Massachusetts v. EPA*, 549 U.S. 497 (2007), but the state plaintiff there alleged, with supporting expert declarations, that EPA’s decision not to regulate greenhouse gas emissions would cause the imminent loss of specific percentages of property that it owned. *Id.* at 522-23. By contrast, the government plaintiffs here do not allege any measurable, imminent impact that the program will have on specific proprietary interests.

**B. The Government Plaintiffs Have Not Established That The Program Will Cause Their Alleged Injuries**

Causation “screens out plaintiffs who were not injured by the defendant’s actions.” *AHM*, 602 U.S. at 381. One function of that requirement is to “rule[] out attenuated links” where the alleged harm is “far removed from [the] distant (even if predictable) ripple effects” of the challenged government action. *Id.* at 383. Neither of the government plaintiffs’ butterfly-effect theories establishes the close causal link needed for Article III standing.

1. The government plaintiffs argue that “increased pollution” from the program will “lead[] to increased hospitalization and emergency room costs” for New York City. Br. 20. That “loose approach to causation” does not establish standing. *AHM*, 602 U.S. at 392. Indeed, the Supreme Court recently rejected a similar argument, where plaintiffs contended that relaxed regulation of mifepristone would increase patient complications, resulting in “downstream economic injuries” to doctors. *Id.* at 386. Those claims “lack[ed] record support and [were] highly speculative.” *Id.* at 390. Further, the “chain of causation” between the regulations and the economic loss was “simply too attenuated.” *Id.* at 391. Endorsing the plaintiffs’ approach, the Court held, would have permitted

1 federal-court challenges to “almost any policy affecting public health.” *Id.* at 392.

2 That reasoning compels the same result here. Plaintiffs speculate that deploying 40,250 gas  
3 postal vehicles nationwide that pollute far less than existing vehicles will increase asthma-related  
4 hospitalization costs for one city. But New York City’s declarant offers no “evidence tending to  
5 suggest” that deploying a small number of less-polluting gas vehicles in the City will “cause[] an  
6 increase in” hospital admissions. *Id.* at 390 (emphasis added). In any event, the chain of causation  
7 between new gas vehicles and increased hospitalization costs is too attenuated to establish standing.  
8 Just as a doctor lacks “standing to sue because she may need to spend more time treating asthma  
9 patients” due to a rollback of emissions standards (*id.* at 391) so too the City lacks standing because  
10 it allegedly will pay for more asthma-related hospital visits due to a small number of less-polluting  
11 gas vehicles on its streets. As in *AHM*, plaintiffs’ approach here would permit challenges to practi-  
12 cally every federal action claimed to affect public health.

13 2. Plaintiffs also argue that “increased pollution” from the program will “contribute to cli-  
14 mate change and damage” of properties owned by California and New York. Br. 20; *see* LaLone  
15 Decl. ¶¶ 39, 42, 48-49. But deploying a small number of less-polluting gas postal vehicles is too  
16 “far removed from [those] ripple effects” to establish standing. *AHM*, 602 U.S. at 383. Plaintiffs  
17 cite no decision endorsing such an attenuated theory. Their only cited causation case was reversed.  
18 *Pub. Citizen v. DOT*, 316 F.3d 1002 (9th Cir. 2003), *rev’d*, 541 U.S. 752 (2004) (discussed at Br.  
19 19-21). And that case involved alleged health-related harms to individuals from increased emis-  
20 sions in their neighborhoods. *Id.* at 1015-16. Regardless, more recent decisions provide “clarifying  
21 principles [and] . . . clear rules” on the limits of climate-change theories of causation. *AHM*, 602  
22 U.S. at 384.

23 For instance, in *Washington Environmental Council v. Bellon*, 732 F.3d 1131 (9th Cir.  
24 2013) (*WEC*), organizations argued that Washington’s decision not to regulate emissions from five  
25 oil refineries contributed to climate change, causing their members to suffer health and other inju-  
26 ries. *Id.* at 1140. That causal link was “too tenuous to support standing” because greenhouse gas  
27 emissions are “not a localized problem . . . but a global occurrence.” *Id.* at 1144, 1147. The refin-  
28 eries were responsible for a small percentage of emissions in Washington. *Id.* at 1143. But “a

1 multitude of independent third parties”—“both within and outside the United States”—were re-  
 2 sponsible for the “global climate change” that “contribut[ed] to Plaintiffs’ injuries.” *Id.* at 1143-44.

3 The Ninth Circuit contrasted the *WEC* plaintiffs’ theory with that in *Massachusetts v. EPA*.  
 4 Even if “special solicitude” were warranted, the *WEC* court explained, the plaintiffs would still lack  
 5 standing: Whereas the “U.S. motor-vehicle sector” at issue in *Massachusetts* “accounted for 6% of  
 6 world-wide carbon dioxide emissions,” there was no evidence that the refineries “‘meaningful[ly]  
 7 contribut[ed]’ to global [greenhouse gas] levels.” *Id.* at 1145-46 (quoting *Massachusetts*, 549 U.S.  
 8 at 525); *see, e.g., Amigos Bravos v. BLM*, 816 F. Supp. 2d 1118, 1136 (D.N.M. 2011); *cf. Juliana*  
 9 *v. United States*, 947 F.3d 1159, 1169 (9th Cir. 2020) (distinguishing *WEC* where climate-change  
 10 injuries were caused by “a host of federal policies” accounting for 25% of fossil fuel extracted  
 11 nationally rather than “isolated agency decisions”).

12 This case is on all fours with *WEC*. California’s and New York’s declarants speculate that  
 13 the program will “increase[] climate risk and climate change impacts to” state-owned properties.  
 14 Chamberlin Decl. ¶ 15; *see LaLone Decl.* ¶¶ 39, 42, 48-49. Those “generalized statements of ‘con-  
 15 tribution’” do not supply a “plausible scientific or other evidentiary basis” to conclude that emis-  
 16 sions from postal vehicles are the source of the States’ climate-change injuries. *WEC*, 732 F.3d at  
 17 1142. More to the point, plaintiffs offer no evidence that emissions from an “isolated agency deci-  
 18 sion[]” (*Juliana*, 947 F.3d at 1169) to deploy a small number of less-polluting gas postal vehicles  
 19 will “meaningful[ly] contribut[e]” (*WEC*, 732 F.3d at 1145) to the global greenhouse gas emissions  
 20 that they claim “will lead to . . . costly impacts on” state-owned properties. Br. 20.

## 21 **II. PLAINTIFFS’ CLAIMS FAIL ON THE MERITS**

22 Even if plaintiffs had established Article III standing, their claims would fail. The PRA  
 23 prohibits plaintiffs’ arbitrary-and-capricious challenges to the Postal Service’s discretionary deter-  
 24 mination of the electric-gas mix of its fleet and the analysis supporting that decision, which were  
 25 reasonable in any event. Plaintiffs’ narrow NEPA claims are also meritless.



**A. Plaintiffs Cannot Challenge The Composition Of The National Postal Fleet And The Postal Service’s Decision Was Reasonable In Any Event**

Under the APA, a “person suffering legal wrong because of agency action . . . is entitled to judicial review” of the action, which a court may set aside if it is “arbitrary [or] capricious.” 5 U.S.C. §§ 702, 706(2)(A). But the PRA generally prohibits APA challenges to actions by the Postal Service (39 U.S.C. §410(a)), which requires operational freedom to efficiently deliver the mail and make related business decisions, like “selecting modes of transportation.” *Id.* § 101(f). Plaintiffs thus cannot challenge the selected electric-gas vehicle mix or the prioritization of upfront cost over total ownership cost. While plaintiffs tag those as NEPA arguments (Br. 31-35), in reality they are APA arbitrary-or-capricious challenges to Postal Service discretionary decisions that are unrelated to its environmental review under NEPA.

Even if plaintiffs could challenge those decisions, its arguments would still fail. APA review is “highly deferential” to the agency (*Nw. Ecosystem All. v. FWS*, 475 F.3d 1136, 1140 (9th Cir. 2007)), whose action is presumed valid “if a reasonable basis exists for its decision.” *Ctr. for Biological Diversity v. BLM*, 833 F.3d 1136, 1146 (9th Cir. 2016). Deference is “especially appropriate” where the “decision involves a high level of technical expertise.” *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA*, 415 F.3d 1078, 1093 (9th Cir. 2005). The Postal Service reasonably explained the basis for its vehicle-procurement decisions.

**1. Plaintiffs’ Challenge To The Electric-Gas Vehicle Mix Fails**

Plaintiffs repeatedly argue that the Postal Service “provide[d] no grounds” for the selected electric-gas vehicle mix. Br. 31-32. But that argument has nothing to do with NEPA, which requires agencies to analyze the environmental impacts of their actions. 42 U.S.C. § 4332(2)(C). Plaintiffs’ claim that the Postal Service did not sufficiently “explain[] how or why” it selected the 62%-electric alternative (Br. 31) is a classic APA argument that an agency did not “articulate a satisfactory explanation for its action.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Such a claim—that an action is “arbitrary and capricious under the APA”—is “distinct” from the claim that an agency “failed to satisfy NEPA’s procedural requirements.” *Ranchers Cattlemen*, 415 F.3d at 1093; *see Oceana, Inc. v. Ross*, 275 F. Supp. 3d 270, 296 (D.D.C. 2017) (similar); *cf. Akiak*, 213 F.3d at 1145 (evaluating only the “validity of the Postal Service’s”

1 NEPA analysis). The PRA forecloses the former. *See* pp. 3-4, *supra*.

2 In any event, the Postal Service provided a well-reasoned explanation for its selected vehi-  
 3 cle mix. The Postal Service must urgently replace increasingly unreliable, 32-year-old vehicles to  
 4 continue to fulfill its mandate to “provide prompt, reliable, and efficient services” “six days a week”  
 5 to 165 million addresses. 39 U.S.C. § 101(a)-(b); *see* JA35-37, JA941, JA955. When replacing  
 6 vehicles, it must “give highest consideration to the prompt, economical, consistent, and reliable  
 7 delivery of all mail.” 39 U.S.C. § 101(f). Accordingly, when selecting the electric-gas vehicle mix,  
 8 the Postal Service considered: operational requirements (JA957, JA1630-31, JA1641); the availa-  
 9 bility of vehicles that meet those requirements (JA956-97, JA932); budget constraints (JA958,  
 10 JA1625-26, JA1649); the 86%-higher upfront cost of electric vehicles compared to gas vehicles  
 11 (JA958, JA1649); and the urgent need to replace old vehicles (JA956-57). That evaluation was also  
 12 based on hundreds of thousands of hours of technical analysis on vehicle capabilities (JA30-32,  
 13 JA264, JA274) to which courts are especially deferential. *Ranchers Cattlemen*, 415 F.3d at 1093.  
 14 Those straightforward explanations are more than sufficient to satisfy “narrow” arbitrary-and-ca-  
 15 pricious review. *State Farm*, 463 U.S. at 43.

16 Plaintiffs argue that the Postal Service did not “provide analytic support for . . . select[ing]  
 17 62 percent” electrical vehicles (Br. 32) but the APA does not demand precision. Rather, an agency  
 18 must “articulate a satisfactory explanation for its action” so that its “path may reasonably be dis-  
 19 cerned.” *State Farm*, 463 U.S. at 43. As discussed, the Postal Service did that through comprehen-  
 20 sive discussions of the factors on which it based its decision. Further, a memorandum from the  
 21 Postal Service’s Senior Vice President of Finance & Strategy discussed in detail and with support-  
 22 ing pricing data the “financial considerations” for selecting the vehicle mix, including the “volatile”  
 23 vehicle market, variable charging-station expenses, and the need to purchase electric vehicles “in  
 24 the most cost-efficient and least risk-incurring manner.” JA2216-24. The memorandum also ex-  
 25 plained the need to balance electrification goals with budget requirements, such as for “needed  
 26 capital improvements,” “facility and vehicle maintenance,” and maintaining “sufficient liquidity to  
 27 conduct regular operations and plan for the possibility of future adverse events.” JA2216.<sup>6</sup>

28 <sup>6</sup> Plaintiffs do not challenge the memorandum’s substance but rather deride it as “self-serving”  
 because it was issued the day before the Revised ROD. Br. 32. n.9. That baseless speculation



1 Plaintiffs’ other vehicle-mix arguments also lack merit. The Postal Service reasonably ex-  
 2 plained why it did not purchase other “models of available electric vehicles” used by certain com-  
 3 petitors. Br. 27; *see id.* at 28, 31. A very limited number of currently available commercial electric  
 4 vehicles meet Postal Service operational needs. *See* JA932, JA956-57, JA964, JA1650-51, JA1771.  
 5 The Postal Service prefers using right-hand-drive vehicles so that carriers can safely, efficiently,  
 6 and ergonomically deliver to curbside residential mailboxes. JA47, JA964-65, JA1774. None of  
 7 the currently available right-hand-drive electric vehicles meet Postal Service operational and finan-  
 8 cial requirements. *See* JA961, JA964-65, JA1650-51. Further, competitors’ electric vehicles are not  
 9 designed for a “unique slow speed, stop and start operating environment” with “hundreds of daily  
 10 hard accelerations and decelerations,” which postal vehicles must navigate. JA274-75, JA957. The  
 11 Postal Service also decided that it would purchase only electric vehicles that can operate for at least  
 12 70 miles on a single charge based on maximum route lengths; the additional battery drain from the  
 13 unique stop-and-start operating environment; and the need to maintain flexibility for additional,  
 14 unexpected trips. JA957. Very few currently available commercial electric vehicles meet that re-  
 15 quirement. JA956-57.

16 Plaintiffs argue (Br. 32) that the Postal Service should have considered lower-cost batteries  
 17 and charging stations or alternative funding, but the vehicle mix was reasonably based on market  
 18 realities. None of the potential suppliers in the competitive solicitations for NGDV and COTS ve-  
 19 hicles offered lower-cost battery options. JA1634. Postal Service engineers considered cheaper  
 20 charger-to-electric-vehicle ratios but ultimately decided to follow the same, one-charger-to-one-  
 21 vehicle approach of other federal agencies due to the “risk [of] degrading” battery ranges from  
 22 intermittent charging; the need to maintain “operational flexibility” when electric vehicles must  
 23 “service . . . longer-than-expected” routes; and the “additional costs for managing vehicle move-  
 24 ment between charging stations across hundreds of sites.” JA1341-42, JA2843. The SEIS also ex-  
 25 plained that the Postal Service had extensively researched alternative funding sources but deter-  
 26 mined that the program was not eligible. JA1646. Thus, even if plaintiffs could challenge the  
 27 

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contravenes the “presumption of regularity” that attaches to agency decisions. *Biden v. Texas*, 597  
 28 U.S. 785, 811 (2022). Regardless, it is common sense that an agency would “summarize[] the fi-  
 nancial considerations” underlying its decision at the conclusion of the decision-making process.  
 JA2216.

1 vehicle mix, the Postal Service reasonably explained its decision.

## 2 **2. Plaintiffs' Challenge To The Consideration Of Upfront Costs Fails**

3 Plaintiffs' argument that the Postal Service should have prioritized "total cost of ownership"  
4 rather than "upfront costs" in selecting vehicles (Br. 33-35) is another attempted end-run around  
5 Congress's decision to "exempt [the Postal Service] from review under the [APA]." *Mittleman*, 757  
6 F.3d at 305. Plaintiffs cite NEPA regulations requiring that an agency identify relied-upon meth-  
7 odologies and scientific information (Br. 33) but the Postal Service's cost modeling was not part of  
8 its NEPA analysis of "*environmental effects*." 42 U.S.C. § 4332(2)(C)(i) (emphasis added). "NEPA  
9 does not require [an agency] to examine the economic consequences of its actions" (*Ass'n of Pub.*  
10 *Agency Customers, Inc. v. BPA*, 126 F.3d 1158, 1186 (9th Cir. 1997)) let alone dictate a particular  
11 financial model for agency decision-making. *See* JA932. To be sure, the EIS and SEIS discussed  
12 vehicle costs to provide the public with additional detail on the Postal Service's decision-making.  
13 *See* pp. 7, 10, *supra*; JA933. But that did not somehow convert the cost analysis into "environmental  
14 effects" review subject to the requirements of NEPA. Plaintiffs thus cannot challenge the Postal  
15 Service's cost modeling as arbitrary and capricious. That limitation is especially important here,  
16 where Congress decided to "place the Service on a business like footing" by withdrawing its pur-  
17 chasing decisions from APA review (*Currier*, 379 F.3d at 725) and directing it to give "highest  
18 consideration" to specified factors when purchasing vehicles. 39 U.S.C. § 101(f).

19 Regardless, the cost analysis was reasonable. A "total cost of ownership model" includes  
20 long-term expenses, such as maintenance and fuel, in calculating lifetime vehicle cost. JA311. The  
21 Postal Service relied on that model in the ROD, which took a sliding-scale approach: purchasing  
22 50,000-165,000 NGDVs, at least 10% of which would be electric. JA4, JA1625. Circumstances  
23 changed after the Postal Service issued the ROD. The need to replace unreliable vehicles grew  
24 increasingly urgent and the Postal Service received \$3 billion in IRA funding to support fleet elec-  
25 trification. JA958, JA1625. "[L]everag[ing] the IRA funding by using the entire amount" up front  
26 enabled the Postal Service to "maximize the quantity of [electric vehicles] at the least possible  
27 financial and operational risk." JA2219. Prioritizing upfront cost also allowed the Postal Service to  
28 replace (and electrify) its fleet more quickly because optimizing long-term costs would have

1 required the Postal Service to “wait[] for [electric vehicles] to become available at the most com-  
 2 petitive prices.” JA2220, JA1625. Moreover, as discussed, cost was only one of several factors that  
 3 the Postal Service considered. *See* JA957-58.

4 Plaintiffs are incorrect (Br. 34-35) that prioritizing upfront cost ran afoul of Postal Service  
 5 guidance, U.S. Postal Serv., *Supplying Principles and Practices* (Apr. 1, 2023), [https://about.usps.com/](https://about.usps.com/manuals/spp/html/welcome.htm)  
 6 [manuals/spp/html/welcome.htm](https://about.usps.com/manuals/spp/html/welcome.htm). That guidance is a supply-chain management tool for contracting  
 7 officers that “supplement[s] the Postal Service’s purchasing regulations.” *Id.*, Introduction. Postal  
 8 Service officials consulted the guidance for the Revised ROD. JA932-33. Plaintiffs acknowledge  
 9 that the guidance does not “require a [total cost of ownership analysis] for every purchase,” but  
 10 insist that the Postal Service nonetheless should have conducted one because the guidance “encour-  
 11 ages” such analysis “for ‘complex’ decisions.” Br. 35. Yet the guidance repeatedly states that it is  
 12 “intended to provide for flexibility and discretion in [its] application to specific business situations.”  
 13 *Supplying Principles and Practices*, Introduction; *see id.*, Best Value, (emphasizing the guidance’s  
 14 “broad flexibility”). The Postal Service used its discretion to apply the guidance in evaluating ve-  
 15 hicle cost for the unique purchasing scenario here. JA932-33.

## 16 **B. The Postal Service Complied With NEPA’s Process Requirements**

17 Although plaintiffs may challenge the Postal Service’s NEPA analysis, the “scope” of judi-  
 18 cial review under NEPA is “narrow.” *Akiak*, 213 F.3d at 1146. The Postal Service had discretion to  
 19 select the vehicles it “deem[ed] necessary or convenient” to deliver the mail. 39 U.S.C. § 401(5).  
 20 “NEPA imposes only procedural requirements” (*Pub. Citizen*, 541 U.S. at 756) to analyze “reason-  
 21 ably foreseeable environmental effects” of that decision. 42 U.S.C. § 4332(2)(C)(i). Accordingly,  
 22 the Court’s role is to “simply . . . ensure” that the Postal Service “adequately considered and dis-  
 23 closed the environmental impact of” the program. *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S.  
 24 87, 97-98 (1983). The Postal Service fully complied with those requirements.

### 25 **1. The NEPA Review Was Not Predetermined**

#### 26 **i. The vehicle supplier contracts were expressly contingent on later NEPA analysis**

27 The Postal Service’s supplier contracts did not violate NEPA. CEQ regulations prohibit  
 28 agencies from “[l]imit[ing] the choice of reasonable alternatives” or “commit[ting] resources

1 prejudicing selection of alternatives.” 40 C.F.R. §§ 1502.2(f), 1506.1(a)(2) (2023). Doing so “pre-  
 2 determines the outcome of [environmental] analysis in violation of NEPA.” *City of Los Angeles v.*  
 3 *FAA*, 63 F.4th 835, 848 (9th Cir. 2023). An agency does not violate this requirement if it “retain[s]  
 4 the authority to change course or alter the plan it was considering implementing.” *WildWest Inst.*  
 5 *v. Bull*, 547 F.3d 1162, 1169 (9th Cir. 2008).

6 The bar for winning a predetermination claim is “high.” *Los Angeles*, 63 F.4th at 848. Agen-  
 7 cies could not carry out their duties without taking steps toward executing major programs before  
 8 completing NEPA review. *See, e.g., Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 205 (4th  
 9 Cir. 2005). It is thus standard for agencies to enter into agreements that are contingent on independ-  
 10 ent NEPA review—especially for complex, multiyear projects. *See, e.g., Ctr. for Env’t L. & Pol’y*  
 11 *v. USBR*, 655 F.3d 1000, 1007 n.3 (9th Cir. 2011); *Forest Guardians v. FWS*, 611 F.3d 692, 718-  
 12 19 (10th Cir. 2010); *Lee v. U.S. Air Force*, 354 F.3d 1229, 1240 (10th Cir. 2004); *Tenn. Env’t*  
 13 *Council v. TVA*, 32 F. Supp. 3d 876, 885 (E.D. Tenn. 2014).

14 The Postal Service had to begin the “multi-year planning and acquisition process of replac-  
 15 ing [its] aging fleet” nearly a decade ago. JA950. It reviewed dozens of prototype vehicles, tested  
 16 prototypes for hundreds of thousands of hours, and evaluated supplier proposals based on cost,  
 17 vehicle design, and manufacturing capabilities. JA30-31, JA264, JA309-312.<sup>7</sup> Once the Postal Ser-  
 18 vice determined which purpose-built vehicle features best met its operational needs (JA30-31), it  
 19 requested and evaluated NGDV production proposals. JA31-32. At the end of that thorough, com-  
 20 petitive process, the Postal Service entered into a contract with Oshkosh.

21 The contract was “expressly contingent upon the [Postal Service’s] satisfactory completion  
 22 of the NEPA EIS process.” JA866, JA873. A “special provision” on NEPA stated that the Postal  
 23 Service could not “guaranty either the outcome or duration of the NEPA . . . process,” which could  
 24 “require[.]” it to “modify” the contract. JA873. For good measure, the contract also empowered the  
 25 Postal Service to “order changes,” including to the “[s]tatement of work” and the “description of  
 26 services” Oshkosh would provide (JA898) and to “terminate th[e] contract . . . for its sole

27  
 28 <sup>7</sup> Prototyping did not “beg[i]n the Program.” Br. 21. The “program” is the action authorized by the Revised ROD to “purchase and deploy[.]” 106,480 vehicles. JA930. The Postal Service purchased prototypes through a separate action that plaintiffs do not challenge.

1 convenience.” JA900. The contracts for COTS vehicles contained similar language. *See* JA2175,  
 2 JA2192-93, JA2195-96, JA2235, JA2252, JA2255-56. Because the contracts reserved to the Postal  
 3 Service the authority to “alter the plan it was considering implementing,” the NEPA process was  
 4 not predetermined. *WildWest*, 547 F.3d at 1169.

5 Entering into NEPA-contingent supplier contracts was also “prudent planning.” JA12. By  
 6 executing the NGDV contract, the Postal Service could allocate funds for Oshkosh to undertake  
 7 assembly-line modifications needed to manufacture both gas and electric vehicles. *See* JA11-12.  
 8 Advanced planning also provided manufacturers lead time to secure components that require “sig-  
 9 nificant production planning to obtain, such as battery cells and [electric] drivetrain components.”  
 10 California Dkt. 110-1 ¶ 5. The Postal Service’s planning complied with NEPA, which allows agen-  
 11 cies to take “action in furtherance of [a] proposal while the EIS is being prepared” (*Monsanto*, 561  
 12 U.S. at 145) if the action does not have “adverse environmental impact[s]” or “[l]imit the choice of  
 13 reasonable alternatives.” 40 C.F.R. § 1506.1(a) (2023). The pre-production preparatory steps that  
 14 the supplier contracts enabled did not have adverse impacts or limit alternatives. The contracts were  
 15 contingent on NEPA review by the Postal Service, which retained complete authority to make any  
 16 changes regarding the vehicles it ultimately chose to “purchase and deploy[.]” JA930.

## 17 **ii. Plaintiffs’ predetermination arguments lack merit**

18 Plaintiffs are incorrect (Br. 21-26) that the supplier contracts predetermined the outcome of  
 19 the Postal Service’s NEPA review. Plaintiffs argue that the supplier contracts “foreclose[d] certain  
 20 options from consideration” and that the Postal Service’s NEPA analysis “need[ed] to align with  
 21 the contract[s].” Br. 22-24. But that is belied by the express language of the contracts, which were  
 22 “contingent on the Postal Service’s satisfactory completion of the NEPA EIS process” and author-  
 23 ized the Postal Service to “modify the quantity [or] type” of vehicles “purchased from any supplier”  
 24 as “a result of the NEPA EIS process.” JA873; *see* JA866, JA2175, JA2180. Plaintiffs characterize  
 25 the contract terms as a “mere formality” (Br. 23), but far from it, the terms were specially negotiated  
 26 to provide the Postal Service with flexibility for NEPA review. JA12, JA964. Further, agency de-  
 27 cisions are entitled to a “presumption of regularity” and plaintiffs do not argue—much less make  
 28 the required “strong showing”—that the Postal Service acted in “bad faith” or exhibited “improper

1 behavior,” as is necessary to overcome that presumption. *Texas*, 597 U.S. at 811.<sup>8</sup>

2 The EIS and SEIS flatly contradict plaintiffs’ argument that the supplier contracts precluded  
3 the Postal Service from analyzing alternatives with a higher percentage of electric vehicles. Br. 25.  
4 Two alternatives contemplated purchasing 100% electric vehicles. JA41, JA43-44. In addition, five  
5 alternatives contemplated purchasing either no NGDVs or no COTS vehicles. JA38-45, JA956.  
6 Moreover, plaintiffs cite no evidence to support their theory that the Postal Service had “already . . .  
7 made” the decision to purchase from Oshkosh. Br. 25. Indeed, three alternatives involved no pur-  
8 chases from Oshkosh at all. JA43-44. So the supplier contracts clearly did not “limit[]” the Postal  
9 Service’s NEPA review. Br. 25. To be sure, the Postal Service voiced its preference for alternatives  
10 that included NGDVs, which have “enhanced safety and customized operational features” that are  
11 “optimal” for mail delivery. JA42. And as plaintiffs note (Br. 24), given the urgent need to replace  
12 old vehicles, the Postal Service favored procuring some gas and electric COTS vehicles, which  
13 “can be obtained at a faster pace.” JA956-57. But NEPA does not require agencies to be “subjec-  
14 tively impartial.” *Los Angeles*, 63 F.4th at 848. It requires agencies to evaluate the potential envi-  
15 ronmental effects of their actions, which the Postal Service did here.

16 The Ninth Circuit decisions plaintiffs cite where agencies committed to actions they could  
17 not alter (Br. 21-26) are inapt. The agencies in those cases made “promise[s]” where changing  
18 course would have put them in “breach of contract” (*Metcalf v. Daley*, 214 F.3d 1135, 1144 (9th  
19 Cir. 2000)) or took actions that would have been “too late to adjust” after NEPA review. *Latham v.*  
20 *Volpe*, 455 F.2d 1111, 1121 (9th Cir. 1971); *see Conner v. Burford*, 848 F.2d 1441, 1149 (9th Cir.  
21 1988) (action did not “reserve to the government the absolute right to” make changes); *Save the*

22  
23 <sup>8</sup> Plaintiffs misread (Br. 22, 24) two terms that did not limit the Postal Service’s authority to make  
24 contractual changes based on its NEPA review. *First*, under a 2020 [REDACTED] agreement, Oshkosh  
25 Corporation promised to [REDACTED]

26 [REDACTED] Nothing in that agreement required the Postal Service to  
27 order certain vehicles and the later NGDV contract was expressly “contingent upon the [Postal  
28 Service’s] satisfactory completion of the NEPA EIS process.” JA866. *Second*, a provision in a  
contract for COTS vehicles stated that the Postal Service would not “make changes . . . that would  
require any changes to the COTS nature of the vehicles or significant detrimental changes to the  
delivery schedule.” JA2252. That industry-standard provision simply prevented the Postal Service  
from requiring the supplier to customize vehicles or deliver vehicles on an unreasonable timeline.  
It did not obligate the Postal Service to purchase certain numbers or types of vehicles, and the  
contract provided that the “obligation to order vehicles . . . [was] expressly contingent upon the  
satisfactory completion of the NEPA SEIS process.” JA2235.



1 *Yaak Comm. v. Block*, 840 F.2d 714, 718 (9th Cir. 1988) (road “construction . . . had already begun”  
 2 when agency completed NEPA review); *Thomas v. Peterson*, 753 F.2d 754, 760-61 (9th Cir. 1985)  
 3 (road built before NEPA review). The Ninth Circuit has explained that these cases are inapplicable  
 4 when an agency makes “no promises” that commit it to a particular action. *Los Angeles*, 63 F.4th  
 5 at 849; *see Forest Guardians*, 611 F.3d at 718. The supplier contracts made “no promises” that  
 6 committed the Postal Service to purchase any particular vehicles. *See* pp. 23-25, *supra*. Charting a  
 7 different course thus would not have been “too late” or a “breach of contract.”

8 The Postal Service’s post-contract actions also do not support plaintiffs’ predetermination  
 9 argument. Plaintiffs primarily argue that the allocation of up to \$482 million for Oshkosh to begin  
 10 production tooling and other assembly-line preparation is evidence of predetermination because the  
 11 NGDV contract obligated the Postal Service to “pay . . . for any work performed.” Br. 23-24; *see*  
 12 JA900. But establishing predetermination generally requires a claimant to demonstrate that the  
 13 agency “commit[ted] . . . *natural resources*, not . . . financial resources.” *WildWest*, 547 F.3d at  
 14 1168; *see Beverly Hills Unified Sch. Dist. v. FTA*, 2016 WL 4650428, at \*88 (C.D. Cal. Feb. 1,  
 15 2016). A “financial commitment” is evidence of predetermination only where it limits the “choice  
 16 of reasonable alternatives,” such as when an agency spends “most or all of its limited budget on  
 17 preparations useful for only one alternative.” *WildWest*, 547 F.3d at 1169. Here, the Postal Service  
 18 paid Oshkosh “only a small fraction” of the allocation to complete assembly-line modifications,  
 19 which were needed “to manufacture *both [gas] and [electric] NGDV[s]*.” JA11-12 (emphasis  
 20 added). The allocation made no “commitment of *natural resources*” and the Postal Service “re-  
 21 tain[ed] absolute authority to decide” the electric-gas and NGDV-COTS mixes of vehicles.  
 22 *WildWest*, 547 F.3d at 1168. Indeed, the allocation was not for “the purchase of any vehicles”  
 23 (JA12) and the EIS analyzed three alternatives that contemplated purchasing no NGDVs at all.  
 24 JA41-44. The allocation thus did not predetermine the NEPA process.

25 The remaining actions that plaintiffs cite (Br. 23-25) do not establish predetermination.  
 26 First, plaintiffs discuss (Br. 23-24) the Postal Service’s March 2022 order for 50,000 NGDVs  
 27 (JA2966-68), 20% of which were originally slated to be electric. JA3046-48. [REDACTED]  
 28 [REDACTED]

1 [REDACTED] The order cannot establish predetermination because the  
 2 Postal Service placed it *after* completing the NEPA process. Regardless, the order did not circum-  
 3 scribe the Postal Service’s ability under the contract to “modify the quantity [or] type” of “NGDVs  
 4 purchased” as “a result of the NEPA EIS process.” JA873. [REDACTED]

5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED] It did not limit the Postal Service’s authority under the contract to decide which vehicles it  
 8 would purchase and deploy. Indeed, the Postal Service later “changed” the order’s “model mix” to  
 9 70% electric vehicles (JA2161-65), [REDACTED] Accordingly,  
 10 when considering this same issue, Judge Donato concluded that there was “no evidence” that the  
 11 NGDV contract “locked” the Postal Service “into an arrangement it can’t get out of.” California  
 12 Dkt. 121 at 2.

13 Plaintiffs also quote (Br. 25, 30) a comment by a Postal Service analyst buried in a lengthy  
 14 spreadsheet evaluating potential alternatives for the SEIS. The analyst stated that a 90%-electric  
 15 alternative would be “[c]ontractually . . . prob[le]matic” because the Postal Service had ordered  
 16 14,500 gas COTS vehicles. JA3418. That lone “individual[] comment[]” from an analyst lacking  
 17 decision-making authority is “immaterial to the predetermination analysis” because it is not  
 18 “fairly . . . attributed to the agency” and does not “reflect the agency’s irreversible and irretrievable  
 19 commitment to a course of action.” *Forest Guardians*, 611 F.3d at 718 n.20; *see Blue Mountains*  
 20 *Biodiversity Project v. Jeffries*, 99 F.4th 438, 447 (9th Cir. 2024) (NEPA claims are not resolved  
 21 by “selective[ly] quot[ing]” “agency personnel”). The comment does not change the fact that the  
 22 supplier contracts were expressly contingent on later NEPA review. Plaintiffs’ administrative-rec-  
 23 ord “flyspeck[ing]” (*Half Moon Bay Fishermans’ Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 508 (9th  
 24 Cir. 1988)) does not clear the “high” bar for establishing predetermination. *Los Angeles*, 63 F.4th  
 25 at 848; *see Nevada v. DOE*, 457 F.3d 78, 93 (D.C. Cir. 2006) (collecting cases).

### 26 **iii. Any error was harmless**

27 Even if plaintiffs had established predetermination, any NEPA error would be harmless.  
 28 Courts must take “due account . . . of the rule of prejudicial error” (5 U.S.C. § 706), the



1 “administrative law . . . harmless error rule.” *Shinseki v. Sanders*, 556 U.S. 396, 406 (2009). An  
 2 error is harmless if it “had no bearing on the procedure used or the substance of [the] decision  
 3 reached.” *Lotus Vaping Techs., LLC v. FDA*, 73 F.4th 657, 673 (9th Cir. 2023). And a NEPA pro-  
 4 cedural error is “harmless” if it has “no effect on agency decision making.” 40 C.F.R. § 1500.3(d)  
 5 (2023). The burden of showing prejudice “rests with the [plaintiff].” *Lotus Vaping*, 73 F.4th at 674.

6 Plaintiffs do not carry that burden. Even if the decision here were predetermined, any such  
 7 error was harmless because it had no bearing on the NEPA procedures followed or underlying  
 8 review. The Postal Service analyzed in detail a reasonable range of seven alternatives. *See* pp. 29-  
 9 32, *infra*. Indeed, EPA’s final comments took no issue with that analysis. JA931; *see* JA1789-96.  
 10 Nor would predetermination have had any bearing on the decision reached. The SEIS explained  
 11 that different alternatives “would not better satisfy” the program’s purpose to urgently modernize  
 12 its fleet. JA1339; *see* JA265, JA1353, JA1638. Accordingly, entering into contracts that the Postal  
 13 Service was free to modify based on its NEPA review did not “materially affect[] the substance of”  
 14 its decision. *Idaho Wool Growers Ass’n v. Vilsack*, 816 F.3d 1095, 1104 (9th Cir. 2016).

## 15 **2. The Postal Service Considered A Reasonable Range Of Alternatives**

### 16 **i. The Postal Service analyzed seven alternatives in detail**

17 An EIS must describe a “reasonable range of alternatives that are technically and econom-  
 18 ically feasible, and meet the purpose and need for the proposed action.” 40 C.F.R. § 1508.1(z)  
 19 (2023); *see* 42 U.S.C. § 4332(2)(C)(iii). But an EIS is not supposed to be “encyclopedic.” 40 C.F.R.  
 20 § 1502.2(a) (2023); *cf. id.* § 1502.7 (capping EIS length). “Time and resources are simply too lim-  
 21 ited . . . to ferret out every possible alternative” (*Vt. Yankee*, 435 U.S. at 551) and “NEPA does not  
 22 require” agencies to do so. 85 Fed. Reg. 43304, 43330 (July 16, 2020). Rather, agencies must “set  
 23 forth only those alternatives necessary to permit a reasoned choice.” *Audubon Soc’y of Portland v.*  
 24 *Haaland*, 40 F.4th 967, 982 (9th Cir. 2022).<sup>9</sup> Agencies do not need to analyze alternatives that are

25  
 26 <sup>9</sup> Plaintiffs misstate the law in arguing that an “EIS [is] inadequate” if there are “reasonable but  
 27 unexamined alternatives.” Br. 27 (quoting *Friends of Southeast’s Future v. Morrison*, 153 F.3d  
 28 1059, 1065 (9th Cir. 1998)). When the cited case was decided, the CEQ regulations stated that an  
 EIS had to “evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a) (1998). CEQ later re-  
 moved the word “all” to “clari[fy]” that “NEPA does not require consideration of all alternatives.”  
 85 Fed. Reg. at 43330; *see* 40 C.F.R. § 1502.14(a) (2023). CEQ’s most recent regulatory revision  
 “reinforce[d]” the point that an agency “need not consider every conceivable alternative.” 40 C.F.R.

1 “infeasible, ineffective, or inconsistent with [its] basic policy objectives.” *Japanese Vill., LLC v.*  
 2 *FTA*, 843 F.3d 445, 463 (9th Cir. 2016).

3 The Postal Service considered a reasonable range of alternatives. The Postal Service evalu-  
 4 ated seven alternatives: (1) a no-action alternative to continue using old gas vehicles; (2) purchasing  
 5 165,000 electric NGDVs; (3) purchasing 165,000 electric COTS vehicles; (4) purchasing 165,000  
 6 gas COTS vehicles; (5) purchasing 165,000 NGDVs, at least 10% of which would be electric;  
 7 (6) purchasing a mix of 106,480 NGDVs and COTS vehicles, 62% of which would be electric; and  
 8 (7) purchasing 106,480 NGDVs 62% of which would be electric. JA38-45, JA319-51, JA986-95,  
 9 JA1697-718. Five of these alternatives—not “only two,” Br. 28—included electric vehicles. The  
 10 Postal Service evaluated options with “material differences” in fleet mix and deployment schedules  
 11 (*Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank*, 693 F.3d 1084, 1101 (9th Cir. 2012)), including  
 12 “middle ground alternative[s]” between the no-action alternative and a 100%-electric alternative.  
 13 *N. Alaska Env’t Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006).

14 That analysis fulfilled the purpose of the alternatives requirement to “foster[] informed de-  
 15 cision-making and informed public participation.” *Westlands Water Dist. v. DOT*, 376 F.3d 853,  
 16 868 (9th Cir. 2004). The Postal Service was not obligated to analyze “additional mid-range alter-  
 17 native[s].” *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1005 (9th Cir. 2013); *see Westlands*  
 18 *Water*, 376 F.3d at 871. Indeed, courts routinely uphold NEPA documents that analyze fewer al-  
 19 ternatives. *E.g., Earth Island Inst. v. USFS*, 87 F.4th 1054, 1065 (9th Cir. 2023) (two alternatives);  
 20 *Blank*, 693 F.3d at 1100 (six alternatives); *Protect Our Cmty’s Found. v. LaCounte*, 939 F.3d 1029,  
 21 1036 (9th Cir. 2019) (five alternatives); *Kempthorne*, 457 F.3d at 978 (same); *see also Friends of*  
 22 *Animals v. Romero*, 948 F.3d 579, 590 (2d Cir. 2020) (four alternatives); *Wyoming v. USDA*, 661  
 23 F.3d 1209, 1246 (10th Cir. 2011) (four alternatives).

24 Plaintiffs’ argument that the Postal Service should not get credit for the alternatives it ana-  
 25 lyzed (Br. 28-31) is meritless. As discussed, the alternatives analysis was not limited by “pre-ex-  
 26 isting contractual commitments.” Br. 28. Indeed, most of the alternatives involved vehicle-

27 § 1502.14(a) (2024); 89 Fed. Reg. at 35503. Plaintiffs thus also misconstrue (Br. 27) a Postal Ser-  
 28 vice NEPA regulation that copied the language from the old CEQ regulation. *See* 39 C.F.R.  
 § 775.11(c)(5). The purpose of the Postal Service NEPA regulations is simply to “implement the  
 [NEPA] regulations . . . issued by [CEQ].” 39 C.F.R. § 775.1.

1 purchasing scenarios different than those in the NEPA-contingent supplier contracts. *See* p. 26,  
 2 *supra*. Plaintiffs are also incorrect that the Postal Service “refused to consider alternatives . . . with  
 3 more than 62% electric vehicles.” Br. 29. The EIS analyzed alternatives to purchase 165,000 elec-  
 4 tric NGDVs and 165,000 electric COTS vehicles. JA41-44. Plaintiffs’ conjecture that the Postal  
 5 Service did not “truly consider[]” those alternatives (Br. 30-31) finds no support in the record. The  
 6 Postal Service thoroughly analyzed the potential impacts of procuring and deploying all-electric  
 7 NGDVs and COTS vehicles. JA69-71, JA74-76, JA324, JA326, JA330-35. It considered green-  
 8 house gas emissions and other pollutants based on EPA-endorsed models (JA69-71, JA74-76) as  
 9 well as, for example, impacts on utilities and infrastructure (JA79-80), energy and fuel requirements  
 10 (JA81-82), and waste management (JA85). Plaintiffs thus are incorrect that the Postal Service “ig-  
 11 nored reasonable alternatives that would be economically feasible.” Br. 29 (discussing *Union*  
 12 *Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 576 (D.C. Cir. 2016)).

13 Plaintiffs selectively quote an EIS comment response explaining that the Postal Service  
 14 analyzed the “hypothetical maximum[]” percentages of both electric and gas NGDVs under the  
 15 minimum-10%-electric alternative so that “the public would understand the full potential environ-  
 16 mental impacts.” JA265 (cited at Br. 30). Nothing in that response indicates that the Postal Service  
 17 did not seriously evaluate the all-electric alternatives. Plaintiffs home in on the word “hypothetical”  
 18 (Br. 30-31) but all NEPA alternatives are hypothetical until a final agency decision; the EIS de-  
 19 scribed even the preferred alternative as “hypothetical.” JA19, JA41. The cited response was simply  
 20 explaining that the minimum-10%-electric alternative had two “hypothetical” poles that the Postal  
 21 Service analyzed: 10% electric NGDVs and 90% electric NGDVs. JA266. The Postal Service else-  
 22 where squarely rejected the suggestion that alternatives with greater than 62% electric vehicles  
 23 were “not feasible.” JA1652. Plaintiffs’ fixation on the word “hypothetical” does not overcome the  
 24 “presumption of regularity” afforded NEPA analysis. *Texas*, 597 U.S. at 811.

25 Plaintiffs are also incorrect (Br. 30-32) that the decision not to evaluate all-electric alterna-  
 26 tives in the SEIS retroactively undermined the earlier consideration of two such alternatives in the  
 27 EIS. As discussed, the purpose of the SEIS was not to analyze a completely new range of alterna-  
 28 tives but rather to “supplement” the EIS by evaluating the environmental impacts of “substantial

changes” to the program. 40 C.F.R. § 1502.9(d)(1)(i) (2023); *see Marsh*, 490 U.S. at 371 n.14. Those changes were partially based on the increasingly urgent need to replace old postal vehicles. *See* JA956-57, JA932, JA1630-31, JA1637. The alternatives in the SEIS reasonably reflected the fact that cost and operational limitations of currently available electric vehicles, and the lengthy process to install charging stations, mean that alternatives with some gas vehicles better address that urgent need. *Id.*; *see* JA958, JA1625-26, JA1633-34 (discussing limitations of electric vehicles), JA1649 (discussing other budgeting needs). Thus, as the Postal Service explained, it “already considered” “high [electric] percentage[]” alternatives in the EIS and focused the SEIS on additional alternatives that took into account changed circumstances. JA1638. Plaintiffs cite no decision supporting their view that focusing an SEIS on a narrow set of alternatives that reflect “significant new circumstances” and “substantial changes to the . . . action” (40 C.F.R. § 1502.9(d)(1) (2023)) somehow undermines previous alternatives analysis in an EIS.

Similarly, the fact that the SEIS discussed several “consideration factors” that guided the Postal Service’s selection of *additional* alternatives for review (JA956-58 (discussed at Br. 30-32)) does not undermine the EIS’s earlier alternatives analysis. Plaintiffs argue that analysis of two all-electric alternatives in the EIS could not have been “meaningful[]” because the SEIS analyzed “only Alternatives that included . . . some [gas] vehicles.” Br. 30. But as discussed, the SEIS’s more narrow focus on alternatives that better met the increasingly urgent need to replace vehicles does not undermine the earlier EIS analysis. Plaintiffs also note (Br. 30) that one consideration factor was electric vehicles’ unsuitability for some rural postal routes. JA957-58. Yet the ROD explained that this fact “did not” render “either of the [all-electric alternatives] infeasible.” JA6. Because the ROD authorized replacing only part of the postal fleet (JA35, JA38), the Postal Service could have selected an all-electric option and “prioritize[d]” placing those vehicles on suitable routes. JA40. Changed circumstances led the Postal Service to focus the SEIS on alternatives that included gas vehicles. Because alternatives with some gas vehicles best met the urgent need to replace old vehicles, the SEIS reasonably considered route suitability as an additional—but not determinative—factor when selecting additional alternatives. *See* JA935.

1                                    **ii. NEPA does not require agencies to analyze commenters' preferred alternatives**

2            Plaintiffs are also incorrect (Br. 26-29) that the Postal Service needed to analyze theirs and  
 3 other commenters' preferred alternatives. The range of alternatives considered "is a determination  
 4 for the agency to make." *Latin Americans for Soc. & Econ. Dev. v. Adm'r of Fed. Highway Admin.*,  
 5 756 F.3d 447, 472 (6th Cir. 2014); *see* 89 Fed. Reg. at 35504 (discussing agency "discretion to  
 6 identify th[e] range" of alternatives). The CEQ regulations provide that an agency "may respond"  
 7 to comments by "[d]eveloping . . . alternatives not previously . . . consider[ed]," but they do not  
 8 require agencies to do so. 40 C.F.R. § 1503.4(a)(1) (2023). In fact, the regulations state that "agen-  
 9 cies are *not* required to respond to each comment" and that a response may simply "[e]xplain[] why  
 10 the comments do not warrant further" consideration. *Id.* (emphasis added).

11            Courts thus have rejected claims that NEPA "require[s]" agencies to evaluate alternatives  
 12 suggested in "a public comment." *Env't Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1201  
 13 (N.D. Cal. 2004); *see, e.g., Earth Island*, 87 F.4th at 1065. To require the Postal Service to analyze  
 14 all commenters' alternatives would contravene NEPA's "rule of reason" (*City of Carmel-By-The-*  
 15 *Sea v. DOT*, 123 F.3d 1142, 1150 (9th Cir. 1997)) and ignore the Supreme Court's instruction that  
 16 an agency need not use its limited resources to "include every alternative . . . thought conceivable  
 17 by the mind of man." *Vt. Yankee*, 435 U.S. at 551.

18            The Postal Service complied with NEPA by including in the EIS and SEIS extensive re-  
 19 sponses to comments. JA263-304, JA1336-61, JA1625-58. Many of those responses explained why  
 20 the Postal Service declined to analyze commenters' preferred alternatives. *E.g.*, JA265, JA301,  
 21 JA1336-37, JA1339, JA1627-28, JA1635-39. For example, EPA suggested that the Postal Service  
 22 "should purchase 90 percent" electric vehicles based on a total-cost-of-ownership analysis. JA1627.  
 23 The Postal Service explained that the urgent need to replace vehicles "immediately," and competing  
 24 budgeting "priorities" to "remedy years of deferred maintenance and to modernize . . . infrastruc-  
 25 ture," militated against prioritizing total cost of ownership to increase the percentage of electric  
 26 vehicles. JA1628.

27            Further, agencies are not required to analyze alternatives that are not "technically and eco-  
 28 nomically feasible" or that do not "meet the purpose and need" of the action. 40 C.F.R. § 1508.1(z)

(2023). The Postal Service explained in response to comments why a number of plaintiffs’ suggestions (Br. 13, 27-28, 32) were not feasible. For example, plaintiffs suggest incorporating into the postal fleet “hybrid vehicles, cargo bikes, small battery electric vehicles, or low-speed options” (Br. 13) but potential suppliers did not include hybrid vehicles in their bids (JA293) and the Postal Service is still “testing and evaluating electronic bike” and other delivery options for “future procurements.” JA1349; *see* JA1642. And as discussed (pp. 21-22, *supra*), the Postal Service reasonably responded to commenters’ suggestions about alternative battery and charging options and competitors’ electric vehicles. *See* Br. 27, 32.

### iii. Any error was harmless

Any conceivable error regarding the range of alternatives considered would be harmless. The Postal Service analyzed seven alternatives ranging from 0% to 100% electric vehicles. JA38-45, JA319-51, JA986-95, JA1697-718. By analyzing those alternatives, the Postal Service was “fully aware of the environmental consequences of the proposed action” (*Idaho Wool*, 816 F.3d at 1104) and provided sufficient information to foster “informed decision-making and informed public participation.” *Westlands Water*, 376 F.3d at 868. Plaintiffs do not explain how “additional mid-range alternative[s]” (*Mont. Wilderness*, 725 F.3d at 1005) would have helped the Postal Service or the public better understand the program’s environmental impacts. And as discussed, the Postal Service explained that analyzing additional middle-ground alternatives would not have impacted its decision-making. *See* JA1339, JA1638, JA265. Plaintiffs thus have not carried their burden of showing harm from the alleged alternatives error.

### 3. The Emissions Modeling Was Reasonable

Plaintiffs devote only two paragraphs to arguments about the Postal Service’s actual environmental analysis. They contend (Br. 35-36) that the Postal Service underestimated emissions by misclassifying two of the new vehicles. That is incorrect.

To estimate direct emissions of greenhouse gases and other pollutants, the Postal Service used the then-current version of EPA’s MOVES model. JA981. Under that model, emissions are estimated based on several factors, including pollutant “source type.” U.S. Env’t Protection Agency, *Population and Activity of Onroad Vehicles in MOVES3* 19 (Apr. 2021),



1 <https://perma.cc/LRZ4-JF5Y>. Source type is the model’s “primary vehicle classification” and com-  
 2 prises “groups of vehicles with similar activity and usage patterns.” *Id.* at 11. Each source type is  
 3 made up of “regulatory classes” of vehicles “subject to similar emission[s] standards.” *Id.* at 12.  
 4 The “light commercial truck” source type includes two regulatory classes of vehicles “primarily  
 5 [for] non-personal use”—“light-duty trucks” that weigh 6,001-8,500 pounds and “light-heavy  
 6 duty” trucks that weigh 8,501-14,000 pounds. *Id.* at 12-13, 17-18. The light-heavy duty regulatory  
 7 class is also a part of other source types, all of which range up to 33,000 pounds, including “school  
 8 buses,” “refuse trucks,” and “short-haul single unit trucks.” *Id.* at 12-13, 18.

9 Here, the Postal Service reasonably estimated emissions by assigning the three gas COTS  
 10 vehicles and NGDVs to the light-commercial-truck source type, which encompasses vehicles from  
 11 6,001-14,000 pounds. JA982, JA1651, JA1699, JA324. The COTS vehicles and NGDVs weigh  
 12 6,834 pounds, 8,700 pounds, and 8,900 pounds (JA1720), well within the light-commercial-truck  
 13 source type range. The Postal Service explained that plaintiffs’ preferred approach—analyzing the  
 14 8,700-pound and 8,900-pound vehicles based on their light-heavy-duty regulatory class—would be  
 15 less “accurate” because that class “largely encompass[es] vehicles with much larger engines that  
 16 use more fuel” and have “a higher weight distribution [of] 8,500 to 14,000 pounds.” JA1651. By  
 17 contrast, the light-commercial-truck source type “sufficiently covers” those vehicles because it “en-  
 18 compasses vehicles” that have “various engine sizes” with a “weight range between 6,000 and  
 19 14,000 pounds.” *Id.* The Postal Service thus provided a rational explanation regarding its applica-  
 20 tion of EPA’s emissions model.

#### 21 **4. The Analysis Of Environmental-Justice Impacts Was Reasonable**

22 Plaintiffs’ argument about the environmental-justice analysis (Br. 36-37) is erroneous. To  
 23 begin with, the Court should not consider plaintiffs’ claim. Neither NEPA nor the applicable CEQ  
 24 regulations mandates environmental-justice analysis. Several executive orders require certain agen-  
 25 cies to analyze such impacts. *See* 88 Fed. Reg. 25251, 25253 (Apr. 21, 2023); 59 Fed. Reg. 7629,  
 26 7630-31 (Feb. 16, 1994). But those orders do not place requirements on independent agencies like  
 27 the Postal Service. Rather, they “encourage[.]” and “request[.]” independent agencies to consider  
 28 environmental justice. 88 Fed. Reg. at 25256; 59 Fed. Reg. at 7632. Even if the orders were binding,



1 the Ninth Circuit has held that they create no “right to judicial review for alleged noncompliance.”  
 2 *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 575 (9th Cir. 1998); *see* 88 Fed. Reg. at  
 3 25261 (The order “does not . . . create any right . . . enforceable at law.”); 59 Fed. Reg. at 7632-33  
 4 (similar). As plaintiffs note (Br. 36), several other courts have endorsed APA arbitrary-and-capri-  
 5 cious review of environmental-justice analysis where agencies “exercised . . . discretion to include  
 6 [such] analysis in [their] NEPA evaluation[s].” *Trenton Threatened Skies, Inc v. FAA*, 90 F.4th 122,  
 7 138 (3d Cir. 2024) (citing decisions). But the PRA prohibits APA challenges to Postal Service  
 8 discretionary decisions, including its decision here to analyze environmental-justice impacts apart  
 9 from any NEPA obligations. Plaintiffs’ claim thus is triply nonreviewable.

10 Regardless, the Postal Service “fulfill[ed] the[] spirit” of the executive orders by consider-  
 11 ing the program’s environmental-justice effects. JA1002. Using tools developed by EPA, CEQ, and  
 12 other federal agencies, the Postal Service conducted a comprehensive analysis of environmental  
 13 burdens affecting disadvantaged populations. JA1672-92. That analysis determined that 84% of the  
 14 sites where the Postal Service intends to prioritize vehicle deployments are in communities that  
 15 environmental burdens particularly affect. JA1005, JA1672-74. The SEIS analyzed the environ-  
 16 mental impacts of both “[e]xisting [c]onditions” and deploying new, cleaner vehicles on nearby  
 17 communities—including environmental-justice communities. JA1005-06, JA1008. Plaintiffs thus  
 18 are incorrect that the Postal Service assumed that the program would have “equal impact on com-  
 19 munities regardless of income and geography” and did not “examine impacts from the continued  
 20 operation” of old vehicles. Br. 36-37. The SEIS reasonably focused the environmental-justice re-  
 21 view on communities in the vicinity of the agency action. *See, e.g., Trenton Threatened Skies*, 90  
 22 F.4th at 138-39; *Sierra Club v. FERC*, 867 F.3d 1357, 1368-70 (D.C. Cir. 2017).

23 The EIS and SEIS also more broadly analyzed potential air-quality impacts on a “nation-  
 24 wide level.” JA981; *see* JA958-64, JA966-1011, JA46-48, JA314-55. The Postal Service concluded  
 25 that the national air-quality benefits of replacing 32-year-old vehicles with mostly electric vehicles  
 26 and some less-polluting gas vehicles “would occur regardless of race or socioeconomic status.”  
 27 JA53. Accordingly, the premise of plaintiffs’ argument that the Postal Service should have evalu-  
 28 ated the program’s “negative emissions impacts . . . on environmental-justice communities” (Br.

37) is incorrect; the program will indisputably improve air quality and plaintiffs do not explain why certain communities would experience those benefits differently. Likewise, there is no support for plaintiffs’ argument that the Postal Service did not “address . . . comments” on environmental justice. Br. 36. The EIS, SEIS, and drafts of those documents contain extensive responses to four rounds of comments, including on environmental justice. JA289-90, JA302, JA1338-39, JA1346-47, JA1361, JA1636-37, JA1640, JA1645, JA1648, JA1796. In fact, EPA noted its “appreciat[ion]” for the Postal Service’s focus on environmental justice. JA1796.

### 5. The Program Is Consistent With The Government Plaintiffs’ Laws

The CEQ regulations require an EIS to “discuss any inconsistency of a proposed action with any approved State . . . or local plan or law.” 40 C.F.R. § 1506.2(d) (2023). That is not an onerous obligation. *See Nat’l Mining Ass’n v. Zinke*, 877 F.3d 845, 877 (9th Cir. 2017). The Postal Service complied with that obligation here by explaining that the program had no “legal inconsistencies” with state or local plans or laws. JA1359; *see* JA285, JA1336, JA1640-41.

The program is not “inconsisten[t]” with the laws plaintiffs cite. Br. 6-7, 38-39. For example, a California law requires regulators to adopt rules that “ensure that statewide greenhouse gas emissions are reduced to at least 40 percent” of 1990 levels by 2030. Cal. Health & Safety Code § 38566 (discussed at Br. 38); *see id.* §§ 38550-51. Other States also have “policies and plans” that require greenhouse gas emission reductions and promote electric vehicle development through sales and registration targets. Br. 38-39. But those long-term targets do not mandate the purchase or use of specific vehicles or otherwise establish requirements that apply to the Postal Service. Regardless, the SEIS explained that the program will result in “significant greenhouse gas emission reductions . . . in accordance with those goals and ambitions.” JA1641. And the Postal Service is continuing to assess the possibility of “achieving 100% electrification for the overall” delivery fleet, which would further advance those goals. *EV Press Release*; *see* JA932, JA1783, JA1639.<sup>10</sup>

<sup>10</sup> Plaintiffs misread an internal briefing in arguing that vehicle “deployment plans” should have considered state emissions goals. Br. 38. The Revised ROD did not select vehicle deployment locations. The Postal Service will make those case-by-case decisions based on “delivery route characteristics” and other operational factors (JA960) and the ability to “leverage[]” “existing power

### 1 III. VACATUR AND AN INJUNCTION ARE UNWARRANTED

2 Plaintiffs lack standing and the Revised ROD complied with NEPA so no remedy is war-  
 3 ranted. But should the Court grant summary judgment to plaintiffs, the Postal Service agrees that  
 4 the Court should order remedy briefing before considering plaintiffs' request to vacate the Revised  
 5 ROD and enjoin the program nationwide. *See* Br. 40 n.13. Whether to enjoin or vacate a major  
 6 agency action is a fact-dependent inquiry that the Court should resolve with the benefit of full  
 7 briefing. In any event, the facts do not support either remedy.

8 As an initial matter, although plaintiffs contend that they do not seek to "remov[e] . . . ve-  
 9 hicles that have already been delivered and/or deployed," that is what would happen if the Court  
 10 were to grant their request to "vacate the . . . revised ROD." Br. 40. The Revised ROD is what  
 11 authorizes the Postal Service to "implement [its] Preferred Alternative" to "purchase and deploy[]"   
 12 new vehicles. JA930. Vacating that action thus would prevent the Postal Service from "deploying"  
 13 new gas and electric vehicles nationwide. Plaintiffs should clarify whether they are, in fact, seeking  
 14 vacatur or instead are pursuing only narrower injunctive relief to prevent the Postal Service from  
 15 "acqui[ring] [additional] gas-powered vehicles." Br. 39.

16 If plaintiffs are seeking vacatur, the Court should not grant that relief. When "equity de-  
 17 mands," courts remand without vacatur for agencies to fix NEPA errors. *Ctr. for Food Safety v.*  
 18 *Regan*, 56 F.4th 648, 663 (9th Cir. 2022). Courts must "weigh the seriousness of the agency's errors  
 19 against 'the disruptive consequences of an interim change that may itself be changed.'" *Id.* Here,  
 20 the EIS and SEIS contained detailed analysis of potential impacts. The alleged NEPA violations  
 21 are relatively minor process errors that the Postal Service could easily "cure . . . on remand." *Solar*  
 22 *Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 997 (9th Cir. 2023). For example, plaintiffs argue that  
 23 the Postal Service should have considered additional middle-ground alternatives. The Postal Ser-  
 24 vice could fix that alleged error on remand by analyzing additional alternatives. That is not the type  
 25 of "serious omission" that supports vacatur. *Id.* at 997. The Court must weigh the alleged (fixable)  
 26 NEPA errors against the disruptive consequences of vacatur, which, as discussed below, would be  
 27 enormous. Further, vacatur would prolong plaintiffs' and their members' exposure to heightened  
 28 infrastructure" for charging stations. JA997; *see* JA1358. The briefing "model[ed]" potential de-  
 29 ployment scenarios (JA3129-207); it did not make any final "deployment plans."

1 emissions from old vehicles. Courts have denied vacatur in similar circumstances where such relief  
 2 would contribute to the “very danger” plaintiffs sought to prevent. *Cal. Cmty. Against Toxics v.*  
 3 *EPA*, 688 F.3d 989, 994 (9th Cir. 2012).

4 An injunction is also unwarranted. Injunctions are “drastic and extraordinary” and “should  
 5 not be granted as a matter of course.” *Monsanto*, 561 U.S. at 165. Rather, a plaintiff must demon-  
 6 strate that (1) “it has suffered an irreparable injury”; (2) “remedies available at law . . . are inade-  
 7 quate to compensate for that injury”; (3) “considering the balance of hardships between the plaintiff  
 8 and defendant, a remedy in equity is warranted”; and (4) “the public interest would not be disserved  
 9 by a permanent injunction.” *Id.* at 156-57. Here, the public-interest element “merge[s]” with the  
 10 Postal Service’s interest. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

11 In the NEPA context, the Supreme Court has urged courts to consider less drastic remedies,  
 12 “including declaratory relief or an injunction tailored to the preparation of an EIS.” *Winter v.*  
 13 *NRDC*, 555 U.S. 7, 33 (2008). Indeed, *Winter* warned that a NEPA violation typically does not  
 14 warrant an injunction because the “ultimate legal claim” is that the agency should conduct further  
 15 environmental review, not that it must “cease” the underlying action. *Id.* at 32; *see Monsanto*, 561  
 16 U.S. at 157 (rejecting a “thumb on the scales” favoring injunctions in NEPA cases); *Forelaws on*  
 17 *Bd. v. Johnson*, 743 F.2d 677, 686 (9th Cir. 1984) (noting NEPA’s “flexibility in remedy”).

18 The NEPA errors that plaintiffs allege, even if accurate, would not justify a nationwide  
 19 injunction of a major program to modernize the national postal fleet. Plaintiffs will suffer no irrep-  
 20 arable injury from the program; indeed, they will benefit from reduced air pollution. *See pp.* 12-14,  
 21 *supra*. But even if emissions from deploying less-polluting gas vehicles injured plaintiffs in specific  
 22 locations, that would not justify an injunction prohibiting the Postal Service from “acqui[ring]”  
 23 such vehicles. Br. 19. Simply acquiring gas postal vehicles does not harm plaintiffs.

24 On the other side of the ledger, a nationwide injunction would force the Postal Service to  
 25 continue using decades-old gas vehicles, exacerbating plaintiffs’ and their members’ exposure to  
 26 heightened emissions, and exposing mail carriers, other drivers, and pedestrians to unnecessary  
 27 safety risks and exhaust. *See* JA941, JA967. An injunction also would significantly hamper the  
 28 Postal Service’s ability to efficiently and reliably deliver the mail. It would force the Postal Service

1 to stop replacing unreliable, 32-year-old vehicles that are expensive to maintain (JA968), jeopard-  
 2 izing its ability to fulfill its obligation to promptly, efficiently, and reliably deliver the mail. *See* 39  
 3 U.S.C. § 101(a)-(b), (f). The resulting mail slowdown would have predictably disastrous conse-  
 4 quences for the economy and public health and could impact upcoming elections.

5 For these reasons, the Court should not enjoin gas vehicle acquisitions. But if the Court is  
 6 otherwise inclined, it should narrowly tailor an injunction to prevent only the acquisition of gas  
 7 vehicles *for deployment in specific locations* where plaintiffs establish imminent harms. Injunctions  
 8 generally “operate with respect to specific parties” (*California v. Texas*, 593 U.S. 659, 672 (2021))  
 9 and “must be ‘narrowly tailored to remedy the specific harm shown.’” *E. Bay Sanctuary Covenant*  
 10 *v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019). The Ninth Circuit has upheld nationwide injunctions  
 11 only in “exceptional cases” (*City and Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th  
 12 Cir. 2018)) where “such breadth was necessary to remedy” a plaintiff’s “particular harm.” *E. Bay*  
 13 *Sanctuary*, 934 F.3d at 1029. In NEPA cases, courts have no trouble issuing narrow injunctions.  
 14 *E.g.*, *N. Cheyenne Tribe v. Norton*, 503 F.3d 836, 844 (9th Cir. 2007).

15 Plaintiffs identified several neighborhoods where organization members will allegedly suf-  
 16 fer harm from gas vehicle use. The Court could remedy the members’ harms without a nationwide  
 17 injunction by prohibiting the Postal Service from using new gas vehicles in those specific neigh-  
 18 borhoods. The government plaintiffs have not established specific, imminent injuries (*see* pp. 15-  
 19 16, *supra*), but even if they had, any injunction outside their borders would impair the interests of  
 20 other States not before the Court. Those States’ potential interest in a modernized, less-polluting  
 21 postal fleet are just as substantial as the government plaintiffs’ interests. Even the broadest relief  
 22 thus should stop at the government plaintiffs’ borders.

### 23 CONCLUSION

24 The Court should deny plaintiffs’ motion for summary judgment and grant the Postal Ser-  
 25 vice’s motion for summary judgment on all claims.

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